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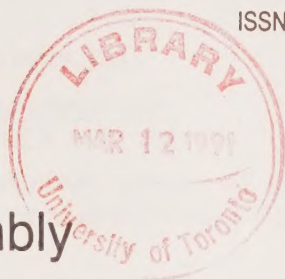
Government  
Publication



M-1 1991

M-1 1991

ISSN 1180-436X



## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Monday 4 February 1991

## Journal des débats (Hansard)

Le lundi 4 février 1991

### Standing committee on the Legislative Assembly

Freedom of Information and  
Protection of Privacy Act, 1987

### Comité permanent de l'Assemblée législative

Loi de 1987 sur l'accès  
à l'information et la protection  
de la vie privée

Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
Greffier : Douglas Arnott

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron

Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday 4 February 1991

The committee met at 1407 in room 151.

### FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

**The Chair:** I call the committee to order.

**Mr Owens:** Mr Chairman, we have had some discussions in and around the mandate of this committee. As we are aware that there are some concerns with respect to the Municipal Freedom of Information and Protection of Privacy Act now, I would like to make a request of you as the Chair and the other two parties that if we have witnesses who want to discuss issues around the municipal act inasmuch as it relates to the provincial act, we allow them that latitude. There may be from time to time some witnesses come forward who may be able to shed some light through the municipal act on the issue of the provincial act, and I make that request to you.

**The Chair:** Thank you, Mr Owens. I am willing to allow that latitude if it is the wish of the committee.

**Mr McClelland:** A brief comment, Mr Chairman: I think it is inevitable that will happen, certainly as we review the implementation of the legislation with respect to provincial bodies, agencies and so forth. There will be some spillover. That is inevitable. I think in particular areas with respect to information available to the media with respect to policing and so forth, those types of things experienced with the OPP as we get into the implementation with municipal forces and so on, it is inevitable that there will be that crossover. I think to unduly limit it and say that we have to keep that focus so narrow with respect to Ontario matters would be to our detriment and we could certainly do well to listen to people and to discuss and consider issues that may be raised, that spinoff, if you will, in terms of municipal, so I am in complete agreement and accord with Mr Owens on that matter.

**Ms S. Murdock:** Just in keeping with that too, I do not know how the other members feel, but given that this is a complete review and we have a year to do it, we should be as open as possible to whatever any group says to us.

**Mrs Marland:** I know when we discussed this at the subcommittee, the concern was, especially when we looked at some of the names, that their whole focus might totally be on the municipal aspect. But I certainly concur with Mr Owens's suggestion. And who knows? We may end up killing two birds with one stone and improving both acts.

### OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

**The Chair:** I would like to at this time invite our first witnesses to appear in front of the committee and they are from the Office of the Information and Privacy Commissioner. Thank you for coming. State your name and the position you hold. The floor is yours.

**Mr Mitchinson:** Thank you. Mr Chairman and members of the standing committee, I first want to thank you for providing the Office of the Information and Privacy Commissioner with the opportunity to appear before you during the three-year review of the provincial act. I will be referring to our office, the Office of the Information and Privacy Commissioner, as the IPC throughout my presentation.

Before I begin, let me introduce myself and my colleagues. My name is Tom Mitchinson and I am the executive director of the IPC. I am responsible for the overall administrative and operational functions of the agency. Ann Cavoukian, one of our assistant commissioners, is the agency's principal spokesperson on matters dealing with part III of the act, involving the protection of personal privacy. Tom Wright, our other assistant commissioner, performs a corresponding role with respect to part II of the act dealing with the resolution of appeals. Tom is a delegated decision-maker with authority to issue orders under the act. Finally, in the audience is John Eichmanis, who is the manager of strategic planning and policy development for the IPC, who may be familiar to a number of members.

**Mrs Marland:** You can give his formal history.

**Mr Mitchinson:** I could not do it justice.

Ann, Tom and I constitute the IPC's executive committee and we have provided collective management for the agency since our former commissioner, Sydney Linden, left the IPC in April of last year. I know I speak for the three of us when I say that we very much look forward to the appointment of a new commissioner over the next short while. We take considerable pride in the fact that the agency has managed to operate reasonably well over the past 10 months, but we all recognize the need for the leadership of a commissioner who can assume all the responsibilities vested in that office by the act. However, until such time as a new commissioner is appointed, we will continue to do all we can to assist the committee in its deliberations.

Before proceeding, I would just like to publicly acknowledge the important and significant role played by Chief Judge Linden during his term as Information and Privacy Commissioner. His leadership during the formative stages of the IPC's development was a key factor in any successes we can claim today.

I understand that it is customary at Legislative hearings such as this to have one person make the presentation and, accordingly, I will present the IPC's corporate view and



attempt to answer questions raised by committee members. Where supplementary information is required, I will turn to my colleagues for assistance. It would be my preference to hold questions until the end of the presentation since I hope to address a number of anticipated issues during the course of my remarks. However, I will defer to the Chair on how he wishes to handle that.

My presentation is intended to provide the committee with our view on how the provincial act is working. While others will no doubt offer different opinions, my presentation will be made from the perspective of the IPC and I will try to assess the overall success of the act from that perspective.

Before I proceed, let me just say a few words about the material we have provided to the committee. I see the committee members have received the two binders of information. Most of this material has been made available to you for reference purposes. I will just briefly review the material that is included in those binders.

If I can deal with the material in reverse order and start with binder II, you will see that it contains a number of items you may already be aware of. As you know, one of the IPC's mandates is to conduct research into the purposes of the act. One of these purposes is the protection of personal privacy and we have sought to develop policy papers we hope will make a contribution from a privacy perspective to the public debate on various issues.

Two policy papers have been prepared which deal with the question of HIV/AIDS, and both have been included in binder II. The document entitled HIV/AIDS in the Workplace provides guidelines for the handling of sensitive HIV/AIDS-related personal information in the Ontario public sector. These guidelines have been adopted by the interministerial committee on AIDS and provide a framework for institutions to follow when addressing this very important and sensitive issue.

A second report, HIV/AIDS: A Need for Privacy, outlines the IPC view on how the issues surrounding the testing for HIV/AIDS should be dealt with by the Ontario government. Also included in binder II are the IPC guidelines on the use of fax technology and an update of how those guidelines are being used in the Ontario public service. In addition, a report called Caller Identification has been included, together with a general guide to the act, produced by our communications department.

The 1989 annual report of the commissioner has also been provided in binder II as has a summary report which outlines the findings of a detailed review of how AIDS-related personal information is collected, used and disclosed throughout the Ontario government.

Finally, at the back of binder II you will find a consolidation of newspaper and other print media articles from roughly 1 January 1988, when the act first came into effect, until the end of 1990. We have compiled this material for the committee, and for anyone else who may be interested, in order to give some appreciation of how the act has been received and perceived in the community and by the print media.

Turning now to binder I, it contains the material we hope will be of most use to this committee during the

review of the provincial act. The act and all relevant amendments and regulations are your point of reference and are located at the front of the binder.

Next is a paper prepared specifically for these hearings which contains suggestions of where the act might be amended. We hope that the committee will carefully consider these suggestions in the context of determining what sections of the act require amendment. All the amendments we are suggesting in this paper flow out of our three years of experience in working with the act.

The next item in binder I is a paper on computer matching that was also prepared specifically for the three-year review. I will be returning to both the computer-matching paper and our suggested changes to the act later in my presentation.

Following the computer-matching paper is a survey of government of Ontario institutions that was done at the request of your predecessor committee. It seeks to provide information on the status, role and functions being performed by institutions' freedom of information and privacy co-ordinators. As you know, these co-ordinators are very important players in the operation of the act and to the success of Ontario's access and privacy scheme.

Also included is a document we hope the committee will be able to use as a reference tool during the three-year review. It compares Ontario's legislation to other jurisdictions with access and privacy schemes and was prepared for the IPC by Jennifer Wilson, Mr McNaught's predecessor, from the legislative library research service.

At the back of binder I we have included selected requests and appeals statistics covering the past three years. At the end of each calendar year, statistics are compiled on the number of access requests received and completed by the various government institutions covered by the act and on the number of appeals received and disposed of by the IPC. The report and graphs in binder I cover appeals data for the years 1988, 1989 and 1990. However, request data are available only for 1988 and 1989, because institutions are still in the process of reporting on their 1990 activity. I would refer committee members to our 1989 annual report in binder II for detailed statistical information covering 1988 and 1989.

Let me move on now to providing our assessment of the operation of Ontario's freedom of information and protection of privacy scheme over the past three years. I should state at the outset that in many ways Ontario's scheme is unique. One of its unique features is the combination of access, or freedom of information, and protection of privacy within one piece of legislation. Few other jurisdictions have followed this approach, and while it offers a number of advantages, there are some disadvantages as well.

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One disadvantage is the potential for confusing the two concepts or values. When we speak of access to government information, we are talking about access to administrative, operational and policy-related information contained in ministry and agency records. In other words, we are dealing with information about what a particular government institution does. The obverse of access in this



context is secrecy. Privacy, on the other hand, deals with individuals and, in the context of the act, the protection of an individual's personal information. There is no obverse to privacy. You either have it or you do not, and you certainly cannot equate privacy with secrecy. When you invade someone's privacy you are taking away something that cannot be retrieved. The act attempts to limit invasions of privacy and says that an invasion should only be permitted if it can be justified because of an equal or higher value.

To say, as some people have, that in seeking to protect personal privacy this act is encouraging secrecy or hindering access to information is to misread the act and to misunderstand the basic principles that underlie it.

We cannot emphasize the distinction between secrecy and privacy too much. If confusion about these concepts is permitted to carry the day in public debates, privacy will be increasingly difficult to defend and this will make the IPC's task all the more difficult in the future. Also, and perhaps more importantly, it may lead to a general insensitivity to the claims of privacy as a human value.

Three elements or components are necessary in order to make the act work. First, there is the public, which has been given certain rights under the act; namely, the right of access to information in government records and the right of protection of their personal information. The extent to which the public is aware of the act and uses it is an important component in making the act a success. The second component is the institutions and the degree to which they are well organized and committed to making the act work. Finally, there is the Information and Privacy Commissioner's office, which has been given certain mandates and functions under the act.

All three components are absolutely necessary for the system established under the act to work. The act cannot properly function without strong commitment from the IPC, efficient and co-operative institutions and a well-informed public.

As you will see from the media response contained in binder II, the act has been discussed in the print media in most parts of Ontario. However, the extent to which individuals know about the act is more difficult to determine. From what we can tell, the general public seems to be reasonably well informed about the provincial act, but there is considerable scope to increase this level of awareness.

Some impressionistic information about public awareness can be found in our annual reports. In 1988, members of the public made a total of 4,784 requests to the 318 provincial institutions for access to general records or personal information. In 1989, this figure increased to 8,233 requests.

Although there is not a one-to-one correlation between the number of requesters and the number of requests, this figure indicates a significant increase in the use of the act by the public over the first two years of operation. We find this to be an encouraging sign, but we believe that considerable work must still be done to increase public awareness of the act. Public education is one of the IPC's primary responsibilities and we have dedicated significant

time and resources to developing an educational outreach program directed at making the act better known in the community.

Another interesting statistic is the breakdown of the types of people who use the act. Figures relating to categories of users must be treated with some caution, as requesters are not required to identify themselves. However, we have been able to come up with some information regarding who uses the act. At least 50% of all requesters over the first two years were individuals acting in their private capacity. The next most frequent users were business representatives, with 7.2%, followed by researchers and the media, with 3% each. More than 30% of the requesters during this period could not be identified by type.

It is difficult to reach any definitive conclusions from these figures in such a short period of time. However, we feel that the Legislature can take some comfort in knowing that the Ontario public is interested in and uses the act and that both knowledge and usage appear to be growing.

Turning now to institutions, as you are aware, the Chairman of the Management Board of Cabinet is the minister responsible for the administration of the act. Although the act did not come into force until 1 January 1988, Management Board's freedom of information and privacy branch, under the direction of Frank White, began the work of creating an administrative infrastructure to deal with the act well before the implementation date. Mr White's branch oversaw the creation of a network of information and privacy co-ordinators in all ministries and agencies covered by the act and ensured that these co-ordinators were trained and ready to handle their responsibilities.

As a result of Management Board's efforts, when 1 January 1988 arrived, there was little delay in processing the first requests. Mr White and his staff continue to provide institutions with advice and assistance on how to deal with the never-ending stream of new issues that arise during the ongoing implementation of this very complex piece of legislation.

While every new act takes time to understand and implement and problems invariably arise, from the IPC's perspective we feel the vast majority of institutions and their senior officials have approached the act with a positive spirit and have co-operated with us in ensuring that the act is being implemented as intended by the Legislature.

You will see from the results of the survey done on the role and functions of the freedom of information and privacy co-ordinators that, by and large, they are fulfilling the responsibilities envisaged for them and are beginning to define their professional status within the civil service.

To satisfy the principles of the act, access to information should be timely and result in the requester receiving as much of the requested information as possible. It is up to the institutions to adhere to these principles, and for the most part they have done a good job. In 1988, 80% of requests were completed within 30 days or less, and this figure increased in 1989 to 84%. It is too early to know whether these figures indicate a long-term trend, but they do show that institutions have taken the issue of timeliness seriously.



Turning to the level of disclosure of general records or personal information, we find that institutions, in the first two years of operation, have been able to satisfy the majority of requesters. In 1988, all requested information was released in 56% of the cases and at least part of the requested information was released in another 22%. Total refusal accounted for only 16% of requests. In 1989, the comparable figures were 71% for full disclosure, 16% for partial disclosure and only 9% for no disclosure.

When these figures are read together with the results of the survey, we can postulate that institutions are responsive, their co-ordinators reasonably well trained, and they are able to respond to the general public in a way that satisfies the majority of requesters most of the time.

I now want to turn my attention to the third component of Ontario's scheme, the Office of the Information and Privacy Commissioner. The Information and Privacy Commissioner is an independent officer of the Legislative Assembly who has been given a number of roles and responsibilities under the act. Some of the more important functions are resolving appeals, advising on privacy implications of proposed legislation and government programs, ensuring compliance with the act through investigation of complaints received from the public and by proactive reviews of government operations, researching matters relating to the operation of the act and educating the public. Clearly, the IPC is a key component of the infrastructure created to make the act work effectively.

As with any new organization, the first few years have been a period of learning and adjusting. We have learned a lot and will continue to do so, but we believe the IPC has now settled into its role and has a clear understanding of its mandate. In the early part of 1990, we completed a review of our organizational structure and introduced changes which would permit us to be more effective in responding to the demands of the provincial act and to prepare for the increase in demands when municipalities were added to Ontario's access and privacy scheme in January 1991.

Looking at the IPC's various functions, I can report that our educational outreach program has been ongoing from the very start of our operations. The commissioner and assistant commissioners, as well as other senior staff of the IPC, have made frequent appearances throughout the province to speak about the act and the rights it gives the public.

In our advisory role, we review all bills introduced in the House, assessing whether they have any access or privacy implications. Where they do, we draw our concerns to the attention of the appropriate ministry, and, on the whole, the government has been open and responsive to our comments and suggestions.

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In other instances we have commented on proposed government programs. The most significant matter dealt with thus far has been our involvement with the introduction of the new health number by the Ministry of Health. While we agreed that the number in many ways represented an improvement over the previous OHIP number, its introduction did raise some significant privacy con-

cerns. The federal experience with the social insurance number showed us the tremendous potential a uniquely assigned number has of becoming a universal identifier. Broad use of the SIN was never intended or sanctioned by federal legislation when it was introduced in the 1960s, yet, because no controls were imposed, the number is widely used and indeed required by both the public and private sectors for services which have no relation to the original intent of the number. In order to prevent a similar situation developing with the Ontario health number, we sought a commitment from the Ministry of Health to make private sector usage illegal and to control use of the number in the public sector to clearly defined, health-related purposes.

As you know, before the House recessed in December, the Minister of Health introduced Bill 24, the Health Cards and Numbers Control Act, which addressed our concerns. In her statement to the House when introducing Bill 24, the minister acknowledged the role played by the IPC in sensitizing the government and the public to the need for the controls established by the legislation. We look forward to the passage of this bill and also to the introduction of a wider-ranging health care information protection act in the upcoming spring session.

In the area of policy development, the IPC has been an active participant in the debate surrounding the issue of HIV and AIDS and privacy. After some careful research and consultation, the IPC published two reports on the subject. The first one, HIV/AIDS in the Workplace, made a series of recommendations on how HIV/AIDS-related personal information should be treated in the workplace. Our second report, HIV/AIDS: A Need for Privacy, made recommendations on the issue of anonymous HIV testing and recommended a new approach to the question of contact tracing and partner notification. The Minister of Health has publicly supported the thrust of the recommendations contained in this report, and I understand the detailed discussions regarding possible implementation of our recommendations are currently under way in the ministry.

We are also engaged in studies of other privacy issues, such as smart card technology and genetic engineering, to name but two. We will also begin to take a closer look at the issues of electronic records and workplace privacy during 1991.

Ensuring compliance with the act is another important function of the IPC. In carrying out this role, our compliance department responds to complaints from members of the public that their privacy has been breached by an institution. Each complaint is investigated and a report is prepared making recommendations to institutions regarding any violations of the act relating to the proper collection, retention, use, disclosure and security of personal information.

Our compliance department has also undertaken what we call compliance reviews. These reviews involve a comprehensive investigation and analysis of an institution's information management practices as they relate to the protection of personal information. A copy of the summary of our review on HIV/AIDS-related personal information



in the Ministry of Health has been included in binder II. We have also recently completed a review of the operation of the Ministry of Government Services record centre, which will be reported in our upcoming 1990 annual report.

Finally, a large part of the IPC's mandate concerns the resolution of disputes between requesters and institutions regarding the right of access to records in the custody or under the control of these institutions. When a request for access to general records or personal information has been denied, the requester has a right, under the act, to appeal the institution's decision to the IPC. When an appeal is received, our appeals department first tries to mediate a settlement between the parties. If mediation is not possible, then the appeal proceeds to an inquiry where all parties are given an opportunity to make submissions to the commissioner or the assistant commissioner, before an order is issued which concludes the appeal.

Over the past three years, the proportion of appeals resolved by order of the commissioner has fallen steadily, from 40% in 1988 to 32% in 1989 to only 16% in 1990. All other appeals were resolved through some form of settlement: mediation, withdrawal or abandonment. We see this as a very encouraging statistic and an indication that the act is working in the way the Legislature intended. As institutions become more knowledgeable about the act, requests are responded to in accordance with the presumption that records should be released unless an exemption applies. Of those decisions that are appealed, many are settled on the basis of a detailed explanation of the act to either or both parties and a realization from one or other that either the records should be released or an exemption properly applies.

The growing body of jurisprudence developed through the issuance of more than 200 orders during the first three years of operation also provides a basis for encouraging settlement. We are optimistic that this trend towards settlement will continue and that only the very difficult and novel cases will require disposition by order of the commissioner or assistant commissioner.

For the remainder of my presentation I would like to outline the IPC's suggested changes to the act and to discuss our recommendations regarding the most appropriate way of grappling with the complex and difficult issue of computer matching in the Ontario government. The act requires the IPC to make proposals such as these to the House on an annual basis. However, given the purpose of this committee's hearings, we felt it would be appropriate to present our suggestions to this committee now rather than waiting for our 1990 annual report.

Our suggested changes focus on what we consider practical issues that need to be resolved. We have quite intentionally not addressed broader issues that would in effect open up the act to major restructuring and revision. However, we do believe that these broader considerations are within the purview of this committee, and if the committee proposes amendments of this nature we would simply request the opportunity to comment on them before any report is finalized so that the committee is made aware

of the impact any proposed changes will have on the operation of the IPC.

The document Suggested Changes to the Freedom of Information and Protection of Privacy Act, 1987, which you received a few weeks ago and which is contained in binder I, describes our proposals. The report sets out three types of changes to the act.

The first are technical changes, which are prompted largely as a result of faulty legislative drafting and do not affect substantive rights. We believe these 11 proposed amendments are for the most part self-explanatory and I will not deal with each one individually. Examples of types of changes we categorize as technical are minor amendments to section 1 which clarify the wording dealing with "custody" and "control" and changes to other sections of the act which correct inconsistencies in the use of the words "appeal" and "review."

The second type of suggested changes have been classified as clarification changes. These changes could affect substantive rights and the committee may want to consider them more carefully than the technical ones. Our experience with the act over the past three years indicates that these clarifications are necessary in order to make the act work more effectively. I will just touch briefly on a couple of the 17 clarification changes we suggest.

Clause 22(a) of the act allows the head to refuse to disclose a record where the record has been published or is currently available to the public, but it does not expressly require the head to inform the person requesting access of the specific location of these records. As former commissioner Linden noted in one of his orders, the purpose of this exemption is to enable the institution to avoid the unnecessary expenditure of funds on photocopying material which is otherwise readily available. However, this purpose is clearly defeated if the requester does not know where to go to obtain this material. Our suggested amendment simply clarifies the situation by requiring the head to inform the requester of the location of the record when claiming the clause 22(a) exemption.

Another example of a clarification change is under clause 29(1)(b) and subsection 29(3), which deal with the notice provided by the head to a requester when access is refused. The current provisions do not require the institution to include a description of the record identified as responding to the request. If a requester has been refused access to a record, how can that person make an informed decision about whether to appeal the decision of the head if he or she does not have some knowledge of the nature of the record? Our suggested change would simply add a subclause to these sections which requires the notice to include a description of the record, thereby codifying what is necessarily implicit in these subsections.

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The third part of the report deals with what we call policy changes which affect substantive rights and may result in changes in the way decisions are made. I will now discuss a number of these 16 suggested policy changes in a bit more detail.

A number of suggestions concern the position of the commissioner. We feel the term of office should be increased



from five to seven years, as is the case in most other comparable jurisdictions. We also think the commissioner should have the authority to appoint whatever number of assistant commissioners he or she feels is appropriate, and that a salary range for the commissioner should be established rather than determined on an ad hoc basis.

We also suggest that the commissioner be required to take an oath of office and confidentiality, and that IPC employees take an oath of confidentiality upon joining the agency. This requirement would make explicit the duty of the commissioner and IPC staff to keep all matters confidential that come within their purview.

Another internal IPC matter which we feel should be addressed is the commissioner's authority to discipline IPC employees on the one hand and the right of employees to grieve any disciplinary action on the other. These matters are not covered in the act at present, yet are established for most other legislative agencies.

Next, we have a number of policy change suggestions that touch on substantive provisions of the act.

Subsection 52(6) of the act gives the head of an institution the authority to require the commissioner to inspect a record at the ministry or agency. Although the practice in the vast majority of appeals has been for the institution to forward a copy of the record to our offices, as presently worded, a head could require the commissioner and IPC staff to view all records relating to every appeal at the institution's premises. This is both impractical and clearly not the intent of the legislation. Therefore, we have suggested that this section be amended to restrict on-site examination of records to exceptional circumstances where it would not be practical to reproduce the record by reason of its length or nature.

The act provides that where an institution does not respond to a request for access within the 30-day time period, the head is deemed to have refused access. However, if the deemed refusal is appealed, no penalty is available for failure to adhere to the statutory time limits, and therefore the institution has little incentive to comply. To address this deficiency, we suggest that a subsection be added to the act which allows the commissioner, in a deemed refusal situation, to require the head to waive fees which would otherwise be recoverable.

The act, in setting out the various privacy protection provisions, is largely silent on the question of what obligation institutions have in ensuring the security of personal information. We have included a suggested amendment that would make this obligation explicit. Since institutions must consider security-related matters in order to fully comply with the privacy provisions of the act, we feel this obligation should be explicitly acknowledged and addressed in the legislation.

There are a number of other privacy-related issues that require attention. We have included a suggested change that would require that all correspondence to the IPC from minors and those in correctional institutions or psychiatric facilities be kept confidential. The need for confidentiality is obvious to us and will ensure that these people are more fully able to exercise their rights under the act. Similar

provisions to the ones we are suggesting are found in the Ombudsman Act.

Another issue we feel strongly about is the use of mailing lists. Mailing lists of individuals' names and addresses are compiled almost routinely by organizations for a variety of purposes but principally for commercial gain. The release of this information without the consent of individuals raises a number of privacy concerns. While part III of the act recognizes and protects personal privacy by restricting the use and disclosure of information, the protection may not extend far enough to include mailing lists, thereby encouraging the plethora of unsolicited and unwanted mail. We suggest that a subclause be added to the act which adds mailing list information to the category of information the release of which is presumed to constitute an unjustified invasion of personal privacy.

Perhaps the most difficult subject for us to raise is the extension of the powers of the commissioner. We fully appreciate that any extension of formal powers needs to be carefully considered by the committee, and I want to make it clear that any suggestions we are making in this area are restricted to difficulties we have experienced in working with the legislation over the past three years.

First, we are recommending that the commissioner be authorized to extend the period for filing an appeal beyond the 30-day time limit in special circumstances. We have dealt with instances where an appellant, for justifiable reasons, has not been able to meet the 30-day deadline. As long as the exercise of discretion is restricted to exceptional cases, we believe that the underlying principles of the act are better served by expressly authorizing the commissioner to extend the time period; concerns about equity and justice should prevail over strict adherence to time limits.

We also suggest that consideration be given to the following two related amendments. First, the act, while stating that the commissioner can make an order disposing of an appeal, does not explicitly provide that an action or decision of the commissioner is final and conclusive. It is clear, from a review of the debates when the act was originally passed, that the Legislature intended to establish the commissioner as the ultimate decision-maker for appeals. We are simply proposing that an express provision to this effect, commonly referred to as a "privative clause," be included in the legislation.

Second, we suggest that the commissioner be given express authority to reconsider a decision or revoke an order in exceptional circumstances. This would provide the necessary flexibility to correct the outcome of an appeal where an error has been made and would eliminate the need for the parties to seek relief through the court process.

These two suggested amendments are consistent with provisions found in the enabling legislation for tribunals performing comparable functions to that of the commissioner.

We also suggest that the act give the commissioner explicit authority to investigate and review activities of institutions that may be in breach of the privacy principles of the act. The act imposes a duty on the commissioner to



perform certain functions which implicitly require the authority to investigate complaints and review information management practices of institutions. Our proposed amendments codify this authority, following precedents found in other jurisdictions which have similar privacy protection legislation, thereby eliminating any need for the IPC to rely on the goodwill of institutions when undertaking investigations and reviews.

Finally, we suggest that the commissioner's order-making powers be extended in the area of privacy protection. At present these powers are restricted to ordering an institution to cease a personal information collection practice or to destroy collections of personal information. We feel this authority is not sufficient to adequately ensure the proper management of personal information, and the commissioner should also be given authority to order an institution to cease a use, disclosure or retention practice that contravenes the act.

The final matter I would like to raise with the committee this afternoon is the practice of computer matching, which is a serious concern of all privacy commissioners. The IPC has produced a detailed report which is included in your materials, and I would like to briefly highlight our findings and recommendations.

Computer matching involves the computerized linkage of automated record systems or databases to identify similarities or differences in that information. For example, in the United States, lists of people who have defaulted on student loans are matched with lists of federal government employees, thereby enabling the government to identify those employees from whom it needs to recover outstanding loans. While computer matches such as this may appear on the surface to be logical and defensible, it is imperative that procedural safeguards are put in place prior to approval and implementation.

The central issue in the debate about computer matching is whether there are adequate safeguards associated with the technology to prevent violations of personal privacy. Computer matching is perceived by privacy advocates to be a potential threat to civil liberties and privacy. All western European countries, the United States and the Canadian federal government use matching as an audit and investigative tool. While no study exists documenting the use of computer matching in the Ontario government, we feel it is reasonable to assume from the experience of other jurisdictions that matching is being practised here as well.

There is a pressing need to determine the extent of computer matching within Ontario and to bring a degree of public accountability to bear on the issue. It is recognized that computer matching is an important and effective tool for the government; however, it is also evident that the privacy concerns associated with matching are grave enough to warrant some form of regulation.

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The statutory authority of the Information and Privacy Commissioner to review computer matching is limited. As a result, we are not able to effectively regulate or monitor computer matching practices that do exist and indeed we are seriously hampered in our ability even to determine the existence of current or proposed matching programs. If the

question of computer matching is to be properly addressed in Ontario, it cannot be done by a simple amendment to the existing statutory framework found in the provincial Freedom of Information and Protection of Privacy Act. It requires a detailed examination of the extent of the problem and careful consideration of the most appropriate mechanism to control and monitor both existing and proposed computer matches.

We propose that a task force be set up within the Ontario government to examine the issue and its associated privacy concerns and to report within six months with recommendations on the most appropriate course of action.

That concludes my presentation. On behalf of my colleagues, I want to thank committee members for their attention and patience with my long-winded remarks. If there are any questions, we would be pleased to answer them. But before we begin, I would like to make one final request of the committee. I understand that you will be hearing from a number of individuals and organizations over the next several days. The IPC will be monitoring these hearings and if it would be of assistance to the committee, we would be pleased to provide written comments on any presentations which touch on areas of our responsibility. Realistically, I think we could undertake to have this information to the committee within two weeks following completion of your hearings, if there is an interest in that on the part of the committee.

Again, thank you very much.

**The Chair:** Thank you, Mr Mitchinson, for making your presentation. I will open the floor for questions. We have roughly until about 4 o'clock or we can extend the time if so wished. We can go around to each political party roughly about 25 minutes. I would like to begin the proceedings today with the official opposition.

**Mr McClelland:** Thank you for your presentation and your availability to assist us in this process.

One area that drew particular interest to me, among others, was the issue brought forth on page 29, the issue with respect to the authorities to investigate and review activities that may be in breach of the principles of the act. You indicated that the commissioner by implication is charged with that responsibility. Can you flesh that out a little bit and perhaps give us some assistance in terms of what kinds of particular tools you would see being provided by legislation and the staffing implications of the range of investigations that you are perhaps called upon to undertake at the present time—you indicated that happens by implication, in any event—the kinds of things that you would see flowing from the specific authority to investigate?

Let me tell you where I am coming from in part. I have a sense that some people are going to say: "We're going to end up with another policing-type agency. We already have agencies and institutions that fulfil that function." Do we have another watchdog, are we having yet another organization which will be adding another layer of prying, if I can use that word, imposing management suggestions to an agency that is already undertaking the responsibilities that could do so with a little bit of guidance or some assistance



from the commissioner? How far do you want to take this investigative unit? How much authority, how inclusive, how many people?

**Mr Mitchinson:** Maybe I could address the people issue first. I think as it stands now, whatever complaints we receive from members of the public that require investigation we now investigate. It is not as if we would be doing anything new that we are not already doing under the act, so I think I can tell you that the resource implications are minimal from it.

I think we have found in the past that when we make our recommendations to the House as part of the requirements under the act, to do so we are basically commenting on the management practices of the government. We cannot conceive of how we could comment on those practices if we do not have authority to investigate and determine whether there are any problems at all.

What happens right now is that on occasion we have had to spend some time trying to convince the various government institutions of that argument in order for us to begin what will ultimately be done in any event. I do not think we are talking about anything more than clarification.

I can just tell you that in a number of jurisdictions, certainly the federal privacy commission, or Australia or Quebec, normally the provisions that we are suggesting are in place in the privacy commission. It is in a sense, I suppose, from our perspective perhaps an oversight as opposed to a fundamentally different way of looking at the way we operate.

**Mr Morin:** I understand that the role of the commissioner is somewhat akin to the Ombudsman in many ways.

**Mr Mitchinson:** In many ways, yes.

**Mr Morin:** The Ombudsman is appointed for a period of 10 years to age 65 and can only be dismissed for cause. Why not do the same thing for the Information and Privacy Commissioner?

**Mr Mitchinson:** When we were considering what to propose in that area, we looked not only at the Ombudsman but also at some other comparable commissioners. We looked at the federal privacy commissioner, the federal information commissioner, the Australian commissioner and Quebec commissioners and we found that generally the most common period of appointment was seven years. The Ombudsman period was the only one that was 10 years. We just felt that the most logical period term was seven years.

**Mr Morin:** Two offices of the Legislature would not have that uniformity.

**Mr Mitchinson:** I do not think we feel strongly about that. I think we felt that five years was probably too short compared to what most other comparable tribunal heads were appointed for.

**Mr Sorbara:** I have a number of questions relating to the data banks that the government has, that private industry has and the role of the privacy commissioner and your office in that regard. I was interested, however, in listening to your remarks concerning the advisory role of the com-

mission. In fact, in your remarks you referred to the fact that the commission's most challenging advisory role so far had to do with its advice proffered to the government in consideration of the introduction of our new health card—the number that distinguishes us and our health, or lack thereof, from every other citizen in the province of Ontario.

Could you tell me, first of all, a little bit about that and about the role you played, about the issues that were brought up for your consideration and how those issues were resolved?

**Mr Mitchinson:** I think Ann Cavoukian is probably the best person to answer that.

**Dr Cavoukian:** We have been monitoring the introduction of the new health number for some time now, I would say since the beginning of 1988. At that point it was not clear what form the health number was going to take or the medium that was going to be used because there was considerable debate as to whether smart card technology must be used instead of the existing magnetic stripe.

**Mr Sorbara:** Can you just explain that to the committee, smart card technology, what the difference is and what we have?

**Dr Cavoukian:** I will try to be brief. Smart card technology would require that a computer chip with memory be embedded in the card that would hold a fair amount of information on the card.

**Mr Sorbara:** Like your entire medical history.

**Dr Cavoukian:** That is one possibility, certainly, so that if you went to a pharmacist, for example, or your own physician and you gave that card, that individual would be aware of the contents of the card. They would have a reader and it would enable reading of that card. We worked quite closely with the Ministry of Health and it decided, I think properly so, that at this point in time the technology was not sufficient to ensure the level of privacy protection we felt was necessary if you did go the smart card route, because in the wrong hands, of course your entire medical history would be available.

The Ministry of Health decided to go the striped card route and at that point decided on the method of the number, that it would be a unique personal identification number, each individual would have his or her own number as opposed to the present subscriber-based OHIP system where the head of the family only had the number. From a privacy protection point of view, there are clear advantages to each individual having his own number and having his own personal information.

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The area that causes a great deal of concern is that without adequate controls on the use of the health number, since in effect it becomes a personal identification number, a universal identification number, if there were not adequate controls imposed at the time of introduction it could go the route of the social insurance number which, you may be aware, has been subjected to a great deal of abuse. It was introduced in the mid-1960s, absent of any controls on its use and it has been—



**Mr Sorbara:** I just want to interrupt you at that point. I think it is fair to say that at the time of the introduction of the SIN there were commitments on the part of the government, clear and unequivocal, that the social insurance number would be used only for the purposes stated in the act and for no other purposes. Is that not right?

**Dr Cavoukian:** That was the intent, clearly. However, its use grew enormously. The controls on its use were lacking even though the intended use, as you indicated, was for just two purposes initially. It has in effect become the de facto identification number for Canada. It is used widely by both the public and the private sector. We were concerned that the Ontario health number not follow the same route and we contacted the Minister of Health and requested that legislative controls be introduced now, prior to its actual implementation, that would do two things. They would restrict the use of the health number within the public sector to health-related purposes and would prohibit its use in effect by the private sector, which we felt had no right to this information.

A considerable degree of dialogue went back and forth between ourselves and the previous government and then, as you know, there was a change in government. We also met with the new Minister of Health, Evelyn Gigantes, and she was very receptive to our comments. As you know, Bill 24 was introduced just before the House rose and very adequately covers the concerns that we had and that we made available to her.

**Mr Sorbara:** I want to get back to the original debate that was going on between you as an adviser to the government and the Ministry of Health and the government writ largely over the question of a smart card or a relatively dumb card. You would consider this a relatively stupid card, would you not, in comparison to the smart card?

**Dr Cavoukian:** It is possible to call it that. It is not a smart card.

**Mr Sorbara:** This can only tell the name, address, phone number, previous residences and a few other tidbits of information.

**Dr Cavoukian:** Yes.

**Mr Sorbara:** A smart card could really keep an individual's entire medical history, including all his visits to a psychiatrist, all his or her visits to doctors of any number and description, other sorts of services provided by the state to the individual; that is what a smart card can do.

**Dr Cavoukian:** That is correct, yes.

**Mr Sorbara:** Was the ministry advocating a smart card and you were advocating a relatively less sophisticated card?

**Dr Cavoukian:** Not really. There was considerable dialogue, but we did not recommend that they go the magnetic stripe route versus the smart card route. We raised concerns with the smart card which they were aware of. We talked about those. They had a number of options and I remember the meeting in February 1988, when we met again. They on their own had decided quite independently to go the magnetic stripe route. We did not get into a great

debate as to why, but one of the concerns they articulated was that they felt the technology, in terms of ensuring the level of security and confidentiality needed to protect privacy they were committed to, was at least three to five years away.

**Mr Sorbara:** What you are saying is that it is quite possible, once we have smarter technologies, that these cards will be replaced with a smart card that has a little computer chip with history encoded on it.

**Dr Cavoukian:** It is certainly possible.

**Mr Sorbara:** What would you predict is going to happen?

**Dr Cavoukian:** I predict that is certainly a possibility within the next 10 years. I cannot predict a time frame. It would depend on the level of the technology.

**Mr Sorbara:** I am also interested in the comments related to the comments on the health card, particularly where you say that you look forward to the passage of Bill 24, which creates a statutory prohibition I guess on inappropriate use of the card, and also to the introduction of a wider-ranging health care information protection act in the upcoming spring session. Can you tell us about that? What should we expect? Are you scooping the Minister of Health now or is this something that we should already know about?

**Mr Mitchinson:** No. When the Minister of Health introduced Bill 24, she made reference to the fact at that time that discussions were under way with the intent of introducing a health care information protection act.

**Mr Sorbara:** What do you anticipate is going to be in that act?

**Mr Mitchinson:** If you recall the Krever commission study into the use of health-related personal information, I think the intent is to build on that document and to introduce a scheme that deals with the protection of personal information that is resident in the entire provincial health system—in doctors' offices, in hospitals, in the Ministry of Health, in the whole system.

**Mr Sorbara:** We do look forward to a world in which pretty quickly a card like this, whether smart or less smart, is going to be inserted in a machine in a doctor's office and all the information that might be available becomes available to that doctor or the receptionist or the nurse or the other individuals working in that office. Is that right?

**Mr Mitchinson:** I think it is pointless to think that the technology is not going to exist. The technology clearly will exist. There is little doubt of that. We are very concerned that when the technology does progress, adequate controls continue to be placed on the use of that technology to protect at the same level as we have acquired protection with the less smart technology. I think that is one of our major priorities, and one of our areas of attention on an ongoing basis is the evolution of smart card technology, particularly as it relates to potential use in the health care field. I think by moving at this stage of the game to a magnetic stripe technology, all it did, to some extent, was make our job a little bit easier now and our job a little bit more difficult as technology evolves.



**Mr Sorbara:** Mr Chairman, just to be very clear on this, the reason for pursuing this line of questions is in some respects to point out that although this act was introduced into the Legislature, in fact based on a model designed by a former Liberal member of the Legislature, Jim Breithaupt, who is now the chair of the Commercial Registration Appeal Tribunal, and designed to provide all of the world with the information that it should have access to that resides within government, whether it is on emerging policies or documents relating to health and safety—I was familiar with those during my time in the Ministry of Labour—or innumerable things, and it was the subject of the presentation of the executive director of the commission, what is increasingly apparent to me is that the real challenge for government over the medium and long term is going to be the effective management of privacy of the individual citizen. Particularly given the submissions that you made in the final part of your presentation referring to computer matching, it sounds to me like, in pursuing those investigations, what you are suggesting you want to do is to put some sort of constraint on government itself not to be overly aggressive or overly ambitious with the information that it itself has.

The original intention of the act was to provide information to the general public without undue harassment by government officials. We added to that a protection of privacy component. You seem to be building on that and saying the commission should intervene or at least make policy suggestions to manage the government's over-aggressive use of information that it has in a variety of data banks and indeed be able to match that. That is of interest to me because it is the very management of that information in the private sector which is so challenging and so threatening to the individual.

Just to give you an example, at American Express I am told that protection of privacy is one of the key training elements for everyone who comes on and works for that company. Why? Because inappropriately managed, someone could go into the computer data banks and trace all of my activities over the past six months—who I sent flowers to—

**Mrs Marland:** I did not get them.

**Mr Sorbara:** Well, Margaret, that is American Express's fault, not mine. But they are coming COD, unfortunately, given recent events. And on it, who I sent flowers to, what hotels I stayed in, what I ate, how much I leave for a tip, what kind of gifts I buy at what particular times of the year, and on and on at the press of a button.

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**Mr Mitchinson:** If I could just interject there, I think one of the reasons you will notice why we have isolated computer matching as a separate heading and a separate report is because, based on investigations that we did, we concluded that this was a very large problem. This is not something that could be addressed simply, like some of the other recommendations, by an amendment to the act.

If it going to be handled effectively and if we are going to address some of the concerns which I think you are alluding to, the first step of the game in the government

sector is for the government to get an awareness of just what kind of computer matching activity is happening. How big is it? How extensive is it? How many controls are on it already? What is the proper way of regulating the use of the technology? It is the same, in a sense, as the comments on the smart card technology. There is no point in resisting the fact that the technology will be able to provide this efficiency. It is, "Let's make sure we can respond to it in order to protect some of the other interests."

**Dr Cavoukian:** If I could just make one comment directed to another point of your question, there are two main purposes to the legislation. Of course, it is the freedom of information side of the legislation that speaks to general records of the government to promote government accountability, records relating to the operation of the government policies, programs of the government. Those are the records that the FOI section of the legislation applies to. There is not, as you know, this freedom of information access to personal information, to my personal information or to yours. There are two entirely separate parts of the act, and personal information is to be protected. It is not at odds with the release of general records relating to the government, but it is just very important to keep the two entirely separate purposes of the act and the two types of records in your mind.

**Mr Sorbara:** I think I understand that, and just before my colleague's supplementary, my final question or request for a comment, it seems to me, given we have members of the press here present, what are they interested in: the protection of privacy of individuals and locations that they think they should have access to?

We are now trying to protect, not based on its inappropriateness under the freedom of information side, but the other side which you describe—that is, the desire to protect the privacy of individuals whose names and alleged crimes perhaps ought not to be provided to the entire world, and it really is the entire world, given our current technologies. It is not the local newspaper; it is a broadcast around the world.

It seems to me that the freedom of information side, which was the pith and substance of this entire exercise, when it was formulated and presented in the form of a bill, or a policy paper and then a bill—"Freedom of information. Let's open up government. Let's let the citizens know what is going on"—that part of the exercise is pretty much under control.

Some people do not get everything they want, and sometimes you have to mediate and sometimes you reach a settlement and sometimes there is an appeal. But the great public policy challenge is the protection of privacy, given our technological ability to aggregate and then divide up and deal with data that can at the touch of a button give a pretty interesting and pretty personal profile of individuals who may not want that information made available to other individuals or the general public.

Am I right in that? Is this your problem now? Is it right to say that the problem of the freedom of information side is pretty well under control, and privacy is the real issue?



**Mr Mitchinson:** I think the more it is said in terms of black or white, the less ability we have to really agree. I think it is too early to really say that the freedom of information side is without its difficulties. It certainly does have its difficulties associated with it as well. But I think if you are looking at which side of the legislation has the potential for ongoing breadth and development and evolution, probably the privacy side of things does. If you look at the way the act was structured, you will find that the sections dealing with freedom of information are laid out more definitively, whereas the sections dealing with the protection of privacy are talked about in more abstract terms, which is, I think, one of the reasons why, when we are asking for some clarification in mandate, primarily it is on the privacy protection side as opposed to the access side.

**Mr McClelland:** Mr Sorbara, in talking about the health card, uses by way of analogy and reference the American Express commercial card. He also raised the issue that you say one of the most difficult subjects would be the extension of the part of the commissioner. Well, let's talk about the commission and the act itself.

You are talking about mailing lists. Getting back to your mailing list, it seems to me that we are getting into an area—and I would be interested in your comments on this—of the commercial-corporate-private sector operation as opposed to government. To what extent do you feel philosophically it is appropriate for the commission to begin to move into that area—I think implicitly you are suggesting that; if I am wrong, I would like some correction on that—and do you think it is appropriate that we address that under the privy of this act or look at it more in the area of commercial practices?

I see some problems, quite frankly, in moving away from government institutions at whatever level, provincial or municipal, and moving into the private corporate sector using this as a vehicle. I do not question the appropriateness of considering the need for that type of legislation or even examining it. Whether it is rejected or not is irrelevant, but I wonder about the appropriateness of this act.

**Mr Mitchinson:** It is a very good question, a very interesting question, which we have also turned our minds to. In various jurisdictions around the world there are the equivalent of privacy commissions that are involved in regulating the private sector. It does exist, but it would be wrong to think that a system involving the private sector could simply be included in the legislation as it currently exists, because there is no jurisdiction in the world that tries to provide freedom of information to the private sector.

We are just dealing with the access to personal information by people in that component of freedom of information, but that is it. Nobody is suggesting that private sector records should be made available to the public. So the fact that we have two broad mandates included in one legislation does present some inhibitions to simply bringing in the private sector.

Another aspect is that in those jurisdictions that do regulate the private sector, generally they are registration-based systems where if an organization wishes to make use

of personal information for a purpose, it goes to a body before it is implemented and it asks for authority to do so. That commission then goes and analyses the request and decides whether or not it can be supported, whereas our system is an investigation review system. Nobody is required to register with us. People go ahead and do their business the way they see best and we come in and monitor that and review that.

**The Chair:** Thank you. Your time has expired.

**Mr Sorbara:** We were just getting going. We were on a roll.

**Mrs Marland:** Can I just clarify? I am sure that in the year ahead, for this committee at any time that we wish our deputants from today to come back, we would have that flexibility.

**The Chair:** Yes.

**Mrs Marland:** Because I can see that the more we get into this very critical subject, the more enlightened we are going to become with the act and, therefore, the more questions we will have of you three as individuals.

**Mr Sorbara:** But you are already enlightened.

**Mrs Marland:** I am, very. I remember, when employers started putting the social insurance number on employee application forms for employment, there was a very big controversy, and I think now, frankly—and I think in one of your answers earlier this afternoon you almost concur, if I did not take what you said incorrectly—sometimes systems are developed and their purpose is designed, and then we get into a situation where it is expanded without the risks and the repercussions of the expansion really being analysed ahead of time.

Frankly, my feeling is, and I have not been in a position where I have studied it at any length, that the SIN numbers are being misused in a lot of circumstances. When we start to look at, as Mr Sorbara mentioned, our latest government-issued card in terms of our health card, I have to wonder if down the road we are going to be putting at risk the protection of the patient rather than the protection of the patient's health. There has to be a point at which to have a smart card becomes a tremendous violation of that patient's privacy and not necessarily is balanced off in weight with an equal protection of that patient's health.

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**Mr Mitchinson:** I think we share the same concern. That, I guess, is our job. Our job is to make sure that as the efficiency arguments are put forward, the privacy component is addressed and considered and dealt with. I think we share your views.

**Mrs Marland:** I know there are concerns about people getting large numbers of prescriptions by going from doctor to doctor or emergency department to emergency department. Maybe if the records of what that patient has already been prescribed were readily available on a computer, perhaps we would be in a position to break down that particular scam. For the number of people who do that, I really worry about the protection of privacy for that patient. I find the whole process rather scary, to tell you the



truth. I think we always felt that eventually we would all end up just being a digit in somebody's computer somewhere. We forget the Christian names and the family names. I really feel that the responsibility you have overall in any area of the impact that this act can have on government is very, very crucial.

**Mr Mitchinson:** Yes, that is rather overwhelming. I agree with you. I think that is a very important role for us. I think all we can say at this stage of the game is that at whatever level we have had to deal with it, in this context so far we feel we have been able to do it. We feel we have been able to address and sensitize the government to the privacy concerns. I can assure you that we will continue to attempt to do that as the technology evolves. We know full well that the technology is going to evolve. There is no doubt about it.

**Mrs Marland:** I know, on the other hand, there are areas where access to information, freedom of information, is very important. One example that I really think about a lot is when the furore developed over the Love Canal in New York state. At that time, under their existing freedom of information restrictions, no one could get to the bottom, both in the literal sense and the research sense, of what that property involved. In the meantime, the Hooker chemical company, which had owned the property, was being maligned and everyone who had anything to do with it was being very severely criticized because of what had evolved with that property. Yet when the freedom of information changed—I have forgotten what the US statute was called. What was it called?

**Mr Mitchinson:** They would have a state statute and a federal statute.

**Mrs Marland:** They did, I know. I have forgotten what the name of their legislation is, but in any case, when it came out, what they found was a complete reversal. Here this company had been damned because it had put all this garbage in what had been constructed as a canal, as you know the story. In any case, the thing is that in that case, until they could release those records, everybody had a totally inaccurate interpretation of what the circumstances were, and then when the truth came out. In fact the Hooker chemical company had not wanted to sell the property to the school board. The school board that wanted to build the school at the Love Canal had gone to the city of Niagara Falls, New York, and forced the city to force the company to sell it to it so that it could build a school there even though there were some rumours of what was in that land, and none of this came out until the access to that information was made available.

That is a very real example. It is a story that everybody understands and can identify with it. There, freedom of information actually served a purpose for everyone. It certainly did for the chemical company that had been maligned and it did for the public to understand a process and what had gone on and who really was responsible.

I am very supportive of that process, but as I say, I am very nervous about the privacy of us as individuals. As far as our health records are concerned, I think we can legislate specific aspects of health that have to be public. Cer-

tainly if you get smallpox you have to be quarantined, so maybe we will get to the point where if you have AIDS it has to be publicized. There are a whole lot of areas where we see changes being made, and those changes will be made at a time when it is appropriate to make those changes in order to protect public health.

Quarantine is a protection for public health in terms of epidemics. There are other epidemics for which there are different sets of rules for different diseases in terms of public health, so why does the public or would the public ever really have to know what is on my smart card? The only reason I would want a smart card would be if it was a protection of my health. My reaction to that is that if my health records have been private all along, and since computer records have been kept of people's health histories and we have not had a problem without this next step, then I really think we would have to be very cautious, as government, to legislate that next step.

**Mr Mitchinson:** Again, I quite agree. I think what we have to be sensitive to is that as technology evolves, capabilities evolve in an exponential manner. I think safeguards that may have been adequate all along may no longer be adequate as technology advances. I think our role and a number of other people's role is just to make sure that continues to be the case.

**Mrs Marland:** We can always assume that we have very ethical staff in the American Express organization, as an example, that has Mr Sorbara's card, but the fact of life is that people are people and human beings are human beings and we can never be guaranteed that computer matching would not go underground or illegally. So my sense to protect myself or my family or anyone else from that is that I want the least amount of information in that computer to start with, and that is why I really object to it when people ask me for my social insurance number unnecessarily.

I really look forward to getting further into this subject as this year progresses and to discussing it at a future opportunity with you.

**Mr Villeneuve:** Thank you for an interesting presentation. I see from your statistics that in 1988 you had 4,700 and some requests, and that in 1989 it almost doubled, to some 318 provincial institutions. We seem to assume that health reasons are the main reasons for information. You have monitored all this. Can you tell us which area of government receives the most requests for information that has hitherto not been available?

**Mr Mitchinson:** Yes. Do you have your binders with you?

**Mr Villeneuve:** I do not. I am sorry.

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**Mr Mitchinson:** Okay. If you can just bear with me, we have some summary statistics in the binder. It is in binder I, section 6. On the request side, the figures are available only for 1988 and 1989 and they show in the back of it. Figure 1 deals with the type of requests that are available, figure 2 the numbers, and figure 3 the disposition. I thought we had some that dealt with the numbers of institutions; I guess we do not—oh, yes; we do, sorry, no,



that is only on appeals. I guess the best I can do for you is to give you the 1989 figures out of the annual report.

**Mr Villeneuve:** My main question revolves around this: Do you see a zeroing in on a supposedly problem area that could continue to get worse or do you see the requests going in a rather general direction?

**Mr Mitchinson:** No. I think in each year there have been certain institutions which have received the bulk of the requests under the act, and I think the nature of the business that various ministries and agencies perform lend themselves, I suppose, to more of an interest from the public in requesting information. I do not think we have had enough time yet to really identify the trends definitively. On the other side—I am just thinking off the top of my head on some of the statistical information we had—there was, I know, a difference in the agencies within the first two years of operation. In one year certain agencies seemed to be the focal point for requests and then in the next year that dropped off quite dramatically.

**Mr Villeneuve:** Would you see within these agencies that information is requested from a great degree of variance as to the availability or the perceived availability of information? I gather your job is to monitor and make sure that it is rather uniform across the board. I am led to believe that information was readily available prior to this legislation which, all of a sudden, became classified information. I can understand that, but to the point where we may be creating a monster, that need not be.

**Mr Mitchinson:** Maybe Tom can comment a bit on that.

**Mr Wright:** I think you are absolutely correct in looking at the situation that existed before this legislation came into effect. In fact, there is a means whereby if you basically had access to general records before the act came into effect, you should continue to do so. I do not have a sense that there has been any change or tightening up as far as the general records area is concerned. I think it is important that we keep in mind this distinction between purely government information records, as Mr Mitchinson described in his presentation, and information about you and I, which we call personal information that is treated quite differently.

As well, just to talk a little bit further with respect to what Tom said, in one year, for example, the Ministry of Revenue had a large volume of requests because for some reason everyone was looking for his own personal assessment information. That issue was resolved within that year and in the following year that number of requests just simply dropped because they were gone, so it fluctuates. It is very issue-specific.

**Mr Villeneuve:** So that was basically testing the system, is what you are telling me. People were testing it to see if indeed what was on pertaining to them was close to what they perceived or to what they thought they had on record.

**Mr Wright:** That is a very good way of describing it. Yes.

**Mr Villeneuve:** As time goes on and as things become more and more sophisticated, I guess your job would be to monitor some of the problems that you have outlined with the computer matchings and what have you. Would you have the power to prevent that?

**Mr Mitchinson:** I guess it all depends on what authority we have in the legislation. I think right now the authority to deal with improper management of personal information is restricted to prohibiting collection practice and ordering a destruction of information. Right now we do not have order-making authority to deal with use of personal information or with disclosure of personal information. I think one of the suggested amendments that we raised was that we feel if we are to provide an oversight function in ensuring the proper management of personal information, it has to really be broader than simply issues relating to collection; it has to deal with use and disclosure and retention as well. Otherwise it is not really coming to grips with the extent of the problem.

I think if we were to get more involved as a regulatory body in the area of computer matching or whatever, as I said in my remarks, it would have to be done by some fairly extensive review of the provisions that currently exist.

**Mr Villeneuve:** Can you at this particular point in time prevent a credit card company, for example, from providing information about where I have spent money with my credit card over the past 12 months? Can you prevent that?

**Mr Mitchinson:** No. The credit card companies are all private sector organizations, totally outside the purview of this legislation. We have no role in regulating credit agencies right now.

**Mr Villeneuve:** This is where a lot of the matching would occur.

**Mr Mitchinson:** I think where it is relevant right now is that under Bill 24 a credit agency would be prohibited from using your new health number in any business that it did, whereas now, if you have dealt with them, you will know that they routinely use the SIN number, but they would be prohibited now under this legislation from using the new Ontario health number.

**Mr Villeneuve:** Do you foresee your role as needing to be expanded, maybe with more teeth as you go on?

**Mr Mitchinson:** As it relates to the private sector?

**Mr Villeneuve:** Yes, as it relates to the entire information gamut, which is a pretty broad spectrum.

**Mr Mitchinson:** I think we have outlined in our brief that we do feel there is a justification for expanded powers in privacy protection under the current provincial act. As I said to Mr McClelland, I think if you start dealing with the private sector, then that is a much bigger issue and I think it would have to be looked at basically from first principles.

**Ms S. Murdock:** I have a couple of quick questions; hopefully quick. On page 11 of the submission there is a mention, "Although there is not a one-one correlation between the number of requesters and the number of



requests....” I get the impression that there is a correlation or there has been some correlation done.

**Mr Mitchinson:** I could not give you correlative figures on it. I just wanted to make the point there that there are some requesters who make multiple requests, so you cannot just simply conclude that, for instance, there have been 8,233 individual requesters.

**Ms S. Murdock:** Okay, so there is no record at this moment as to whether or not a requester makes 500 requests.

**Mr Mitchinson:** At the request level? Is there?

**Mr Wright:** No.

**Mr Mitchinson:** No, not at the request level.

**Ms S. Murdock:** The second question I have is again from your submission. A six-month task force on computer matches? Have you done any costing on that in terms of what the cost factor would be?

**Mr Mitchinson:** No, we have not. In fact, as I tried to say there a little bit earlier, I think in order for anyone to make any effective decisions in the area of computer matching, we feel that more information needs to be known and that this is, in a sense, an information-gathering purpose behind this task force, an ability to come back and provide some recommendations as to which way we should go. I do not think we envisioned it to be an expensive undertaking or a very heavily resource-laden undertaking, but I do not—

**Ms S. Murdock:** Has this information gathering been done in other jurisdictions, for instance in the United States or Australia?

**Mr Mitchinson:** One of the issues we have found, and the reason why we have recommended a task force approach, is that the approaches that were taken in the other jurisdictions on the problem have basically not come to grips with the vast nature of the problem. The survey and to sort of design a comprehensive system to deal with it has not been the approach that has been taken in these other jurisdictions. They have tried to piecemeal it, and as a result I think they have been largely ineffective in coming to grips with the fundamental problems around computer matching.

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**Ms S. Murdock:** Okay. Lastly, this is just a global question. In the materials that you provided to us, I do not have much difficulty with the technical aspects; it is just clarification of language and using the same language throughout. In the proposed policy changes, however, in every instance you explained what the situation was, what you were proposing and how the proposed amendments would resolve the problems that you have encountered in its use over the past three years.

I am just wondering, in the proposed amendments there is no indication anywhere throughout as to possible red flags as to user groups or consumer groups that may object to that kind of an amendment, or proposed amendment, and I was wondering if you had looked at that or if you were prepared at some time in the future to provide us with that information.

**Mr Mitchinson:** I think the approach we took to identifying amendments, from our perspective, was where we saw difficulties in the way we have been doing business over the last three years that could be remedied. Anything that we are proposing there, as we are aware, would not affect the user groups that use the act right now. They are primarily related to the things that would make us able to do our job better. If you notice, a lot of the provisions relate to the operation of our agency itself, and a number of the other ones deal with our ability to deal with institutions of the government more effectively. They are not targeted at user groups or any way of inhibiting the right of someone to use the act or to complain to us. If anything, I think they are enhancing that concept.

**Mr Owens:** On page 25 of your submission you make reference to needing a legislated mechanism to discipline employees. I am wondering why you would be different from other government agencies or employers in the field with respect to discipline and why discipline for cause cannot be used in its regular form, and second, with respect to its impact on collective agreements, your reference to grievance makes me believe that we are talking about employees who are certified in a bargaining agreement; how would that type of legislation impact on the rights of those people within that bargaining unit?

**Mr Mitchinson:** Just to start off, we are not an organized agency. There is no bargaining unit within our organization. I think our intent by making this suggestion is basically to do just what you have suggested, to make our organization operate just the same way every other comparable organization operates.

If you look in the legislation, for instance, for the Audit Act or the Legislative Assembly Act or the Election Act as it relates to the employees of those various legislative bodies, generally they have a system in place that allows for grievance of actions related to dismissals or classifications or anything like that, and our act is just simply silent on it. There is nothing in it whatsoever. We are suggesting that we introduce a scheme very much patterned after the auditors' operation, which gives the employees the right to grieve and also makes it clear that the employer has responsibilities under the act as well.

I do not mean to imply that there is no authority now—I think there is considerable authority—but I think that to be more consistent with other organizations it would be better to have it laid out specifically in the legislation.

**Mr Owens:** Second, on page 29 you talk about giving a commissioner the flexibility to change an appeal. What type of mechanism do you see that taking?

**Mr Mitchinson:** Tom, maybe you can speak to that.

**Mr Wright:** I can. In terms of the flexibility, what we are looking for is simply the situation where there is a misstatement of some kind, an incorrectly stated fact in an order. We are talking about the order situation. I can indicate that it is simply the sort of ability that other tribunals have. What it does is assist all parties to the appeal to avoid the need to go on to a court and take the time to have a court basically recognize that yes, something just happened, it should not have, and through the miracles, or lack



of, word processing etc, some things do happen. This mechanism simply allows small changes that do not necessarily affect the validity of the order to be made. It is a fairly administrative situation as far as administrative tribunals are concerned.

**Mr Owens:** With respect to the cost it involves to an individual in filing or requesting information, do you have any idea what the average cost was last year or the last couple of years per request to an individual?

**Mr Mitchinson:** There is no request cost associated with an appeal. The cost takes place at the request stage. I really think probably the Management Board people are the best people to provide you with information about anything like that relating to the request stage.

**The Chair:** Is that a request for that information?

**Mr Owens:** Yes, it is actually. I would like to find out what the average cost is and then I would also like to find out from the Management Board people whether they see that as being prohibitive or whether they are looking at any changes to make the system more inclusive rather than exclusive.

**The Chair:** Are there any further questions?

**Mr Sorbara:** Do we get some questions over here tomorrow, or are our 25 minutes up and that is it?

**The Chair:** I can certainly allow a certain latitude, if that is the wish of the committee, but that means the other parties would get response time as well. Is that the wish of the committee?

**Mr Sorbara:** I am not the whip on this committee. I am actually substituting. I know that you cut off Mr McLelland a while ago at the 25-minute mark and then the New Democrats did not seem to have enough questions to fill in the time available for the completion of today's work. I thought maybe you wanted some other questions or were soliciting some other questions from other members.

**The Chair:** Is that the wish of the committee? That is not the wish of the committee.

**Mr Sorbara:** What is not the wish of the committee?

**The Chair:** Is it the wish of the committee to go around again with questions?

**Mr Owens:** Are we planning on finishing at 4 o'clock?

**The Chair:** Yes, 4 o'clock.

**Ms S. Murdock:** If it is going to elucidate anything, I would be most happy for Mr Sorbara to speak.

Interjections.

**Mr Sorbara:** I think there is some disagreement on your side.

**Ms S. Murdock:** In truth, the whole point of this exercise is to learn as much as we can from any source and from any question that we can. I think it is fair that we do that.

**Mr Sorbara:** I want to ask a few questions on the primary side of your mandate; that is, the freedom of information side, the side that has a freedom of information co-ordinator placed in every ministry to deal with requests

for information which are considered and then a decision is made by, in most cases, the deputy minister, but under the act a person called the head of the organization.

I am wondering if you have an example or two of an appeal that was difficult and the basis upon which the appeal was adjudicated, whether in favour of the requester of the information or against. What I am trying to get to is the kind of information that people are looking for.

**Mr Mitchinson:** I am going to very gingerly turn this over to Tom Wright, but I will just say at the outset that on the access to information side, we perform the function of a quasi-judicial tribunal.

**Mr Sorbara:** I understand that.

**Mr Mitchinson:** We have to be very careful. So if we are a bit guarded in the way we describe it, it is for that reason.

**Mr Sorbara:** But you render decisions.

**Mr Mitchinson:** Right.

**Mr Sorbara:** I do not want you to talk about a case that you are currently considering, but a judgement that was made, what was the request for the information, what were the issues in the appeal, how did you decide that question and why did you decide it in that fashion? Pick a difficult one; pick a tricky one. There are lots of requests for information. I will just give you a personal anecdotal experience.

When I was the Minister of Consumer and Commercial Relations, the head of the liquor board employees' union came to see me and said, "We've been trying to get a piece of information out of your ministry through freedom of information for months and months and we can't get it." I said, "What is it that you want?" He described it to me and I said: "Why didn't you just ask me for it? I don't have any problem disclosing that."

I am trying to get a sense within the adjudicative context of what people are looking for, what the issues are when you are considering an appeal and what the territory is like. Describe the judicial territory, if you could.

**Mr Wright:** I would be happy to do that. I will use an example, as Tom mentioned, of an order that was issued I believe in the month of December. The person had asked for a study that had been done by some consultants who had been retained by one of the ministries with a view to—

**Mr Sorbara:** What ministry?

**Mr Wright:** I believe it was the Ministry of Natural Resources. This was a request that was made earlier in the year. The person was asking for this study which related to the cottaging policy that was going to be developed in the north. This person had an interest in terms of the environmental impact that might take place, depending on the nature of the policy that was ultimately developed. They made a request to the ministry and the request was denied on the basis that, one, in some way it was a cabinet record because a policy had not yet been agreed upon, and second—

**Mr Sorbara:** Was that a general, typical line of defence, that this is a cabinet record, that this is for advice to a minister, that this is on its way to cabinet?



**Mr Wright:** Cabinet record actually has not been an exemption that has been used all that much in terms of the appeals that we have seen. In this particular case, it was one that was used. The other one that was used was advice for recommendations of a consultant retained by the institution. That is an exemption that is available to the government under section 13.

Those two exemptions were the basis for the denial of access. The person appealed to the commission and the process that we have in place for dealing with an appeal proceeded to the point where it could not be mediated. There was no opportunity to mediate in that case, so we went to the final stage which is where an order is actually made. Both of the parties to the appeal are given an opportunity to make representations to me in this case—

**Mr Sorbara:** You sit alone under those circumstances?

**Mr Wright:** I am a sole decision-maker. That is correct, yes.

**Mr Owens:** On a point of order, Mr Chairman: I am just wondering how much time you have allocated on this new rotation per each.

**The Chair:** About four minutes, Mr Owens, and I was just going to ask Mrs Marland if she had a further question to ask. Are there further questions over here?

**Mr Sorbara:** Am I done then?

**Mr Fletcher:** You are done.

**Mr Sorbara:** I am in the middle of this question and I am not going to be able to finish it.

**The Chair:** You can finish your question and the response.

**Mr Wright:** Yes, in fact I am the person who makes the decision in the appeal, and in that particular circumstance I found that the facts were such that it was not a record that fell within the cabinet record exemption. In fact, looking at section 13 in that particular case, although it clearly did contain advice or recommendations, the act itself contains in section 13 a number of exceptions. Even if a record contains advice or recommendations, the Legislature when the act was introduced said, “But, if it is this type of record”—one of which was a type of study—“then that whole record should go out.”

What I ordered in that case was that the record be disclosed. Our practice is to ask the ministry to confirm that the record has been disclosed pursuant to the order and we received that notice in that case and in fact an acknowledgement from the person asking for the record that it had been received.

**Mr Sorbara:** And you provided written reasons for your decisions?

**Mr Wright:** Every order is in writing, yes.

**The Chair:** Thank you. We wish to thank the two assistant commissioners and the executive director of the Office of the Information and Privacy Commissioner for coming along here today. No doubt we will be hearing from you through the course of the year. Thank you.

Before we go, just a point of information for the committee. On behalf of the committee, I have requested the clerk to see if he can do something about the climate in this committee room for the duration of the hearing. As an addition to the agenda for tomorrow afternoon, the Solicitor General will be appearing at 3:45. Meeting adjourned until 10 am.

The committee adjourned at 1555.



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M-2 1991

M-2 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Tuesday 5 February 1991

## Journal des débats (Hansard)

Le mardi 5 février 1991

### Standing committee on the Legislative Assembly

Freedom of Information and  
Protection of Privacy Act, 1987

### Comité permanent de l'Assemblée législative

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à l'information et la protection  
de la vie privée

Chair: Noel Duignan  
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Président : Noel Duignan  
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Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron

Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday 5 February 1991

The committee met at 1011 in room 151.

### FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

**The Chair:** I would like to call the meeting to order. I see a quorum.

KEN RUBIN

**The Chair:** I would like to welcome Ken Rubin here today. We have only one witness here this morning, so we can allow a little leeway in time to expand on your brief and to allow for extra questions. You may proceed.

**Mr Rubin:** I was walking over here and I noticed the food bank, the peace camp and last of all, before entering the building, the barricade, and somehow that is what I feel the state of affairs is in terms of government openness in Ontario.

The brief you heard yesterday was from the Information and Privacy Commissioner. Although I have comments of reaction on his brief—or their brief—I come here primarily as a user, as a researcher, and to give you a strong indication, as a major user of the act, of the problems that I see and the future that I envisage.

I certainly also would hope that the committee itself plays just as important a role in the circumstances of the federal justice committee, where not only was there all-party agreement, but a very progressive report that went beyond the narrow confines of both the provisions under the freedom of information side and the privacy side, and unfortunately was not at all accepted by the federal government. In fact that government has been doing its utmost to try to downgrade accessed information and privacy legislation. I am wondering too if we have a similar type of situation developing in Ontario or not; I hope not.

I guess the themes I am here to talk to you about are: Is the current government taking advantage of the electorate mood for change of style of government? That implies resolving coverups and privacy abuses and having more honest and fair government. I am not going to be reading from my brief.

The second theme I would like to touch on—because I realize that members of the committee, in some cases, have come to this afresh and I think that is good—is that there is a past history to this act. One reason you are here is because the act was far from perfect when in 1985-86 it was debated and passed, and implemented in January 1988. The reason for a three-year statutory review, I think, anyhow, was to improve it and I hope that is borne in mind throughout the proceedings. I would of course prefer to have the position of the government clearly stated at this

point and that you call particular departments and question them, particularly those that have greater secrecy practices or privacy abuses within their departments.

The third theme, I think, in trying to limit myself to some of the concerns and experiences I have had, is how to improve the act dramatically. I am not after piecemeal change. I think the act is not working well. It had some unique features in comparison to other provincial or federal legislation which I would classify primarily as first-generation legislation. Here in Ontario, though, with the new government, and hopefully a new attitude, I think you can move ahead and contribute to being a model for the rest of the country.

Let me backtrack to the theme of the current government and say that to date, unfortunately, I have been very disappointed in the signals, or lack of signals, particularly on the openness side of this whole question. I can point to several events. Certainly one that is in the news a lot these days is the introduction, which went ahead, of the Municipal Freedom of Information and Protection of Privacy Act, which I certainly recommend you make part of your discussions. In fact you will notice one of my recommendations is that they be eventually amalgamated.

This government knew it was coming. They had been elected before its implementation. I think they should have sent a clear signal that it was not good enough. There is great confusion, at least where I am from in eastern Ontario, among municipalities and school boards and police commissions as to how to implement it or whether it strait-jackets them unnecessarily. I can think of several areas from police information to construction information to exact salary information and a few others where it takes away people's rights, and this is at the local level. Besides, those high increases that the past government put in will affect the local level a lot more.

That is another signal I was waiting for this government to give clearly, to not only users but the public, that it would not stand for a government that during an election campaign, without public consultation or pre-notification, would introduce a 25% to 50% fee increase in search and preparation fees and in computer and other costs.

The minister responsible appears to have defended this increase, which astounded me, on the basis that it is fine because it somehow equals the rate of inflation. Maybe even on a mathematical basis I do not understand it, but I certainly do not understand, does that mean everything should be under the rate of inflation, sort of a CPI automatic price increase? This is not sort of a GST wonderland, I hope, where everything just gets added on to everything and we, who want to use the act, end up paying for it.

Another signal that is of concern to me is that if I was in their shoes—obviously I am not; I realize there are other



commitments and it is a new government and it did not expect to get elected. Certainly yesterday I saw the minister and told her and her assistants that I would expect a better plan of action because there are a lot of measures that are interrelated from—again, in the news today or yesterday—open meetings to whistle-blowing, an environmental bill of rights and other things I have not even talked about, like citizen-initiated referendums, that should form part of a plan of action.

1020

If a government wants to be open, it has to start indicating that it wants to be. In addition to that it has to have a strong directive that tells its employees, tells the general public, corporations and voluntary groups: "We will not act as other governments in the past have. We will act with a greater degree of openness. We will issue certain basic guidelines." That is important. Even a gentleman by the name of Mr Clark in his brief administration, or Mr Trudeau in 1979 and 1982, I believe it was, issued directives before the legislation, however bad it was, was introduced saying to public employees: "Listen, there's going to be a new order of things. Get ready and get ready to change your attitude a bit."

That is an important signal and one I hope will be forthcoming in the next few weeks at most. It cannot wait for a year. I am a firm believer in what Jed Baldwin has told me over the years as sort of the father of, I guess, a lot of at least the Canadian legislation, that if a majority government does not do anything in the first year, forget it.

Majority governments tend to close ranks and become more institutionalized, more complacent, to have that sense of power. Unless you say that we want a real change, something that is more permanent, even in the social commitments on programs, which are all very well, but besides resource redistribution let's bear in mind that there has to be information resource reallocation—that is, a reworking of the relationship between citizen and government that is long overdue.

People are cynical, are alienated. I do not have all the answers, but I certainly see that a government, although you cannot legislate the attitudes of public employees or others, can do a hell of a lot more to bring openness through legislative enactments, enabling legislation, to redress and to help that balance.

I would also point to another signal. Most of my almost 600 applications were done under the previous regime, and by the way, to some 30 agencies, smaller ones and larger departments, and I know of other people who filed applications or have helped them, and I am talking primarily under the freedom of information side although I have helped on the privacy side. I have noticed in the ones that I have filed recently that I ain't getting anything really different. I am still getting the same exemptions cited, although, let's face it—I think this is one thing you will discover—there are the good guys and the bad guys or some departments that are more flexible than other departments. This is not a monolithic system. If it was, God help us.

I can give you a few examples of the current government's own departments still denying me informa-

tion. I do not think this strikes me as the new, in quotes, sunshine regime—sort of the Bob Rae; the sunshine ray as opposed to the zapping ray, sort of the death ray or however you want to put it. You do not need a death wish right now; you need to relate to your citizens.

But the thing is that you can totally blank out, as one agency did, the current discussion of the free trade options of the current government, or you can announce that a 30% refillable ratio should be met, but in discussions—the matter is under appeal, granted—with Ministry of the Environment officials, I am told that I will still be denied the monthly reports filed by the soft drink industry by regulation, partly because they do not want to be embarrassed by giving away, supposedly, their competitive position. But I want to know what that ratio is between refillable and non-refillables. I ask how the government can know, particularly since the reports they are getting are limited. They do not consist of the entire industry, the hotels and the restaurants. They may concern what is being collected in the so-called blue box program, I do not know.

It is helpful for the public to be able to debate issues that are of environmental concern. I am not too sure if they will ever know if their target is being met if they do not have the right information. I feel they do not have the right information.

I will just leave you with one other type of example, although I could give you several of a recent nature. The Minister of Health introduced, I think, some pretty progressive legislation after the fact to help protect health cards. I applied for one of the earlier consultant reports addressing that issue after the fact because I was concerned that the previous government had gone ahead. I did not apply for my health card until I knew that the bill was into its second reading, I can assure you of that.

I found out, first of all, that they wanted to charge me fees to view it in Ottawa. For severing the document, I contacted even the consultant. He was quite overwhelmed to see the amount of exemptions. How can I determine how the government, how can I compare it to the bill if they are going to take all this stuff, supposedly policy advice or whatever? It is a consultant's report to begin with. I was not exactly enamoured by that approach. Yes, I am getting other things. I am not going to, throughout this, say that I have not. I have circulated some articles that indicate the times I have had some success.

I do not want to totally paint a gloomy picture that every freedom of information co-ordinator is only concerned about collecting fees and applying the exemptions, or that every deputy minister is stalling, that kind of thing.

I certainly want to convey that it is happening. I also want to convey that the current legislation puts too many exemptions in place to help facilitate my opening remark about a better relationship, a better deal for that citizen-government relationship.

I find that the current government has some very interesting proposals which are overdue on the features that must go towards greater openness or privacy protection. I have mentioned some of them. Even a more open appointments system is one of them, or class actions. But when I start looking at them, or what is behind them and I see



some of them are being backtracked or they are introduced and there is a little confusion over them or they are not co-ordinated, I say a plan of action is definitely needed.

For instance, in the open meeting section, here you have one ministry looking at—in the past I looked at Bill 152, which was the last bill of the Minister of Municipal Affairs on the open meetings. It is very limited. You have to analyse these bills as a committee too. At least from my viewpoint, they are not tough enough or they have too many exemptions. Yet on the other hand it does not cover school boards, does not cover police commissions, does not cover a lot of local bodies, let alone provincial agencies that need sunshine open meeting requirements.

You get the whistle-blowing provision, for instance, where you have one department, the Attorney General, thinking about, and I have not seen the details, introducing it for public employees; then you have another department for a certain segment of the private sector, through its environmental bill of rights, talking about perhaps that.

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I said to the minister yesterday and I am saying to you that here is a great opportunity. Do not blow it. Let's try and at least work this through in a more co-operative, systematic fashion, because these things will be a lot more permanent if they are enacted than a lot of other measures that the government introduced. I certainly would not mind having my car insurance premiums kept low or I certainly would not mind having more day care and things like that, but I want to be able to communicate and feel that my government is listening and that I am being heard and that so is everybody else.

I am not just a user. I am also involved with a lot of community groups and public interest groups, and I am not just speaking—before I came here, I did consult with a lot of groups, particularly from my area, and there is an impression that the current government is not as yet that accessible. With the past government, it was, well, if you had the right money or connections, maybe you had greater success. I do not want to say there was not communication. I am just saying everybody has to improve it. I can tell you that even people inside the government now, even at the political level, are saying: "What the heck. What is all this secrecy?" So I think people are waking up—I think it is the 1990s—to that fact that we need a new style of government.

Although I do not want to harp on it, I certainly will say that the past government did a fairly good beginning hatchet job, partly, I think, through this committee, of trying to erode the freedom-of-information legislation in this province. I regret that, because adding exemptions before the three-year statutory review, adding confidentiality provisions, adding mandatory fee requirements, adding fee increases are not meant to help users or the public.

I am sorry, I do not feel it is proper for a government to keep introducing all these bills before I and other people could even have a chance. They are not just housekeeping; they have implications. I do not think it is proper for a government to engage in backtracking, nor did I think it was wisely handled to pass the Municipal Freedom of Information and Protection of Privacy Act based on one-

sided consultation with certain municipal officials, no public consultation in any great degree or anything I saw. Because they would have been told, just as the media is telling the ministry—and I am sure you will hear from them—now that its provisions about covering the police institutions, the law enforcement institutions, is wrong.

Maybe there is a shift to privacy, but there also has to be some common sense. I feel that the past government bears some of the burden of contributing to a slide to secrecy. There was a minority government when the bill was passed, but it is hard when you are a majority government to say, and that is my message: "Hey, we want to be more open. We can get ahead and do things for you."

I want to add one thing here because I think it is important. People say, "Geez, all the costs associated with introducing all this open government style of things. It not only is more democratic—it's more difficult, yes—but it's costly." I do not think it is that costly. For instance, this information access protection of privacy program is really very not very costly at all if you compare it to other information programs or propaganda programs—you can call some that—or other government expenses.

I can give you one example, where I think users have helped save you a lot. The Globe and Mail, using the access act, did an excellent series on day care. As a result, that ministry looked more closely at how it licenses, how it inspects. I do not think they finally removed it, because I certainly have gone further on that issue myself, but the articles and the impact were there and it probably helped save money, it probably helped redirect resources. That is a proper use of the act, and that is the significance of the legislation.

As I say, I am not here totally to point fingers. I am here to set an optimist's tone. I am pressing the ministry. I am pressing you. I want to see change. I do not want to see us go backward, because I just think people will not believe anything any more.

If you are going to keep this act complicated and confusing, and not simple and easy, then you are going to get the response—how many people are using this act? I think you would find, once you get the statistics, that last year use is dropping. It has not been that great. You might say there was not enough publicity or you might say people are turned off by the exemptions, or maybe it is only meant for an élite, particularly the way it is worded, and so on. But a lot of people I know have questions or would frame things if they felt more comfortable with the process and with the results. That is what I am going to try and address.

If you look at the statistics, I think far too many exemptions were cited, there were problems with time delays and so on. I do not want to just say, "Hey, these are the problems." I have some answers, as somebody with a degree of experience in all provincial legislation. Six provinces have legislation, and the Yukon does. BC and Saskatchewan are thinking of adopting legislation. New Brunswick is also re-examining its legislation. Newfoundland, all of a sudden, out of the blue, decided to drop its Ombudsman role, which does not help matters.

I already said I would try to concentrate on some recommendations under the act. Let me deal with privacy first



rather than last, because I think it at times gets short shrift in this thing, because information access, which I am certainly a more major user of at this time, is much more in the public eye.

It is very important to protect people's identity, but part of the problem, and I think the committee has to study it further, is the balance between access and privacy. Although the act tries to address it, it needs to be seriously reviewed. That is why I recommend a one-year closer look at it.

I can think of other examples besides the law enforcement one. I was denied the names of physicians who extra-billed this province. I consider that the public's right to know, not the privacy protection of people who benefited and perhaps misused the trust of what was the law of the land. I am sorry. It is not a matter of privacy invasion.

But what is a matter of privacy invasion? That is the question, and I think the commission yesterday was on the right track by saying not only did it need more powers, but the real problems lie elsewhere. They lie partly in the private sector, in the public sector. They are such things as ongoing, unknown computer matching and surveillance, electronic tracking. You already have some, in terms of divorce maintenance and what have you. You have CSIS agreements which have to be reviewed, you have a health card which may become a smart card. Do the current proposals even cover that kind of possibility? You have transporter data flow of a lot of the citizens' information to the United States, in particular. You have electronic monitoring in the workplace. You have real privacy invasion problems.

This legislation admittedly is first-generation. It primarily deals with the access to personal information. Part of the problem there, by the way, is that it allows so many third parties access to that information, including the federal government on matches; that, I am suggesting you do a moratorium on or better identification of all matching exercises.

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But if you want to broaden the notion of privacy, do not just leave it to the notion of access. In fact, you may eventually have to split it off from the freedom of information area. Certainly you need a separate review or a separate privacy commissioner. The issues do conflict. There is a balance, yes, but if you want one area to shine and not to get lost, then you need the measures. I am just saying you have to extend yourself to more of a data protection of personal information.

I cannot say that strongly enough, because I really think that is primarily the main concern of the individuals in this province. Yes, public policy is, but I think that is where people—we are making some tradeoffs now, but some people, as a result of privacy invasion, are either unfairly losing their jobs or are being discriminated against or what have you; maybe it is through AIDS testing or whatever.

This not only has to be looked at; it has to be acted on, there have to be moratoriums. There has to be more than the commission recommends. There have to be penalties. If the cops are going to go in and get some information,

they need warrants, in all cases. You need a whole process that treats personal information as my property and your property, not the government's or the company's. You will find on both the access and the privacy sides that you should extend it—lo and behold—to the private sector. That means companies or professional bodies.

Look at the doctors. They have just set up a task force on one of these things which has been covered up too long, which I am sure the government or other people in a lot of areas have known: the whole question of sexual and physical assault.

If we are all going to be open, we all have to be on a level playing field. It is fine to have started on a first-generation act just limited to the government. By the way, it is too limited, because you are leaving out 10 to 15 agencies like the Art Gallery of Ontario, you are leaving out public hospitals. You are leaving out a lot of public agencies. You are leaving out a lot of agencies that are getting a lot of government money, too.

I think the way to handle it in the private sector, both on the privacy and on the access sides, is to adapt codes. You certainly do not want the bureaucratic routine that in part is here on the government side, but I think you want to give them a little clout, not just say "give access to," but that there be penalties assigned and so on. You have a reviewer, the commission, to make sure these privacy codes are enforceable and more important than the Royal Bank's voluntary compliance privacy code, for instance. If I were a subscriber there and had a real problem, I suspect I would not get as far as if I had the clout and the backing and could complain or appeal to the commissioner.

It is not an ideological concern, that we must always bring the private sector in. But would it not be a great idea if there were more information disclosure for corporations? Look what is happening with Algoma or with Varity and so on. If the government is going to plan its economy or help its citizens, I think everybody bears an equal burden of having a degree of openness. We do not have that now. Let's not just look to our government institutions to be the goody-goodies. We have to have everybody think it over.

Turning to the freedom of information side, I think one of the very basic things that has to be addressed is that exemptions are not a principle of the act. Until that mentality is wiped out, we will never have an information release act. They are not meant to be written in a preamble of an act. A result of that logic is what we get in the act, which was a great compromise in 1985: the public interest override. What is that public interest override? It says that if grave environmental health conditions, with compelling circumstances, really outweigh those exemptions, well, maybe we will do it.

If that ever went to court, not only would it not hold up, it has been proven in a lot of the appeals I have given through the commissioner or others that it is meaningless. Why is it meaningless? Because the weight is on the government side. The exemptions, which are too many and too broad, are on the government side.

I am saying whoa. Is this what we want? Is this an access act? It is a secrecy act. If that is the way you want to



structure legally an act, then you are going to get what you deserve, and I do not want to deserve that. I do not think it is fair. There is still a place for certain exemptions, and in my brief I think I am saying that not only should they be secondary to the public interest relief principle, or that severance, which is the principle of getting as much information as you can, should go beyond the so-called reasonable severance—that is like tying one hand behind your back and putting you in favour of the government—but that certain exemptions are totally meaningless, like policy advice and defence. Those are covered in either other jurisdictions or in other exemptions, which themselves have to be narrowed. I am not even sure if intergovernmental affairs should be an exemption any more. If the Premier here can announce constitutional hearings and say, “What we want is less federal-provincial secrecy,” yet he still has this exemption which his departments use, who is kidding who? It is still there, and it is an important decision-making process in this country.

Similarly, things like cabinet confidence. It is there as an exemption, which is better than federally as an exclusion, but you have tied two hands behind your back, because the list is so long that anything going up towards cabinet, goodbye. That is unfortunate, because there is a lot of factual information, there is a lot of information which at some point or other might have been released as white papers or other things so that people could participate or discuss and debate along with the politicians or the government about what is going on in this province.

I am not going to get into every—I will point out that the law enforcement exemption really needs change. It is the major used one besides personal privacy. There are certain groups who certainly over the years—I can tell you, I have documents for it—that have lobbied. There are people who have vested interests in keeping secrecy, certain law enforcement agencies, certain corporations, certain government agencies, and they have done an effective job in this act in ensuring that their interests are recognized. They sure have not cared about the public interest. That has to be, I am saying, readdressed, and you do not readdress it by tinkering: you readdress it by putting your mind to what the act and the spirit of the act is supposed to be about.

You also do not just stop there with exemptions. You look at the question: Why do we not, as in Sweden, have daily inspection of records produced by the government and different ministries? Who is kidding who? Should somebody have to go through all the hoops of applying and this and that? There is a lot of information out there, including a lot that hopefully would now become available. It has to be available. It has to be accessible.

Similarly, I think you have to tie the question of information access to proper, effective recordkeeping. Not only are a lot of records becoming computerized, and that poses difficulties in getting them, because some guy and his personal computer can erase or keep on there and never print out, and how in the heck are we going to find out that it exists or that it ever did exist? And this has happened to me. Some guy can go and hold his meeting orally and it is part of a decision-making process. How are we going to

find out what happened? Somebody can miss records or keep them sloppily or keep them in a fashion that is not user-friendly.

I am saying it is high time that people realize that, although the records are for managerial purposes, they are also for public dissemination. If that is the case and the commissioner needs those powers not only, as was said yesterday, for use in disclosure and retention of collection practices—and I think that was referring primarily to the privacy side—but more generally, and penalties to go with that so that record practices will now be administered. Not the vague, archival or Management Board or whoever issues in this jurisdiction, abstract, recordkeeping management practices, but much more specific ones, ones that say if you are holding meetings that are towards making decisions, they have to be recorded, and if they are not recorded you are going to get fined. That may sound moralistic or whatever, but the fact of the matter is that people should expect a degree of honesty and openness in any government agency.

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The other areas that I would turn to briefly are the fees. I have nothing against fees if they are reasonable; it is just that my definition of reasonableness and the government's is like sort of the nickel and dime version of a morality play. I think the government is not understanding that this is a democratic right. This is not just a highway toll collection, you know, that is going on. Although fees have not been that high in terms of the amount collected, there have been a lot of people, including myself, who have abandoned applications because of fees.

I say that reasonableness is if you have real lengthy record searches. If you have real large volumes of records to copy, computer or on a manual basis, then there is reasonableness if you have a more flexible fee waiver. The current fee waiver is not that flexible because you have to show either financial hardship—whatever that is—or you have to fit within a narrow public interest safety waiver. I can say even when I applied for Ontario Hydro meeting minutes, the commissioner ruled, “Well, that is not, in my subjective view, safety or safe to the point where it warrants a waiver.” So again, what was potentially flexible was narrowed down so that we have right now not a flexible enough fee waiver, but we also have fees which I think are obnoxious and which will show to be more obnoxious, not only the increases, on the municipal level.

Can you imagine local people who need fast information walking in and being told not only “Wait 30 days” and “Put it in writing” but also, “Oh, by the way, if it is over \$5”—which is ridiculous for an administrative waiver—“you will start paying for all the photocopying and all the other time.” This is just not the way to treat your citizens.

On top of that, if I live in Ottawa and I have to pay shipping costs because I do not live in Toronto, “Oh, yes, that is fair,” they say. If I want to get certain information, lo and behold, my goodness, there are exemptions—remember what I said before, the act is slanted towards exemptions and therefore severability is implied—then guess what? I get charged search and preparation fees. Is that not nice? For the physical deletion of exemptions, I have the



privilege of paying for that. Now, is that in the spirit of the act? No.

So I feel it is very important to drop those kinds of charges and, as I say in my recommendations, which I will not go into totally, these things should no longer be the way of doing it.

I have suggested things in terms of time delay. I agree with the commissioner. I thought it was a novel idea of, if you get it late, tough luck, no more fees, or it can be assessed. But I go further, because there are people obstructing the release of information and they still have to be penalized, and penalized in a tougher way than the current act allows.

In terms of the review process, because of the things I am suggesting of privacy codes and information access codes on the private sector side and the expansion that has happened in the municipal agencies, I think you need a three-person commission. I cannot see one person doing it. I feel that it warrants a full commission. I think the Quebec model has certainly some merits. I still feel one person should be designated privacy commissioner.

I also want, unlike the commissioner, a more flexible appeal system. I strongly disagree with not being able to see at least the legal—I do not want to see the confidential records in question in an appeal, but I certainly want to see the legal representations of the ministries and of the third corporate parties, who I do not usually, by the way, even know until their decision is issued that they have made them. I feel that process has to be re-evaluated. I think the commissioner has done a fairly good job within the act in terms of issuing clear decisions—not that they have gone in my favour mostly—and that is partly reflecting the act.

I think also that the commission, as I say, needs more powers on records and so on.

**The Chair:** Sorry to interrupt, Mr Rubin. I have allowed, because you are the only witness this morning, a certain leeway or flexibility in presentation that has gone on roughly an extra 25 minutes. So a couple of more minutes to sum up, and then we can—

**Mr Rubin:** I was just about to. I sort of noticed you raising the sign of authority.

**The Chair:** Thank you.

**Mr Rubin:** I basically want to leave you with one further thought which is directed towards this committee. That is that you have an important role not just now but in a permanent review role. Part of the whole package you want from a government is making parliamentary or legislative committees stronger. Give them more resources, give them more permanent staff and let them really deal with issues. It is not just this review; it is going to be the review four years from now. It is going to be the issues that you hear, the technological changes on privacy invasion that occur between then and now that somebody has to be there to listen to. If you are going to try and change around the whole government process or you are going to try to make people more open, you have to be vigilant, you have to have oversight committees. I feel that this committee, if so designated, should do it and I think you should

also ask the government for those types of terms of reference.

I hope I have covered something that will give you food for thought. I hope I have kicked off—and I am glad I was the first user—something to give you a broader overview, to give you a challenge, and I hope I have.

**The Chair:** Thank you very much. In the normal rotation basis, we begin today with the third party. We have until 12 o'clock, so that is roughly 20 minutes for each party.

**Mrs Marland:** Mr Rubin, you are quite original and obviously you are quite refreshing in some of your approaches. While I probably do not agree with everything that you say, I certainly agree with some of it. When I flip through the newspaper clippings of some of the subject areas that you have brought to the attention of the public and some of the questions that you have asked, frankly I think some of the questions that you have been asking needed to be asked. One headline I see is, "Why All the Secrecy Surrounding the SkyDome?"

I think as an example, where we are dealing with government, government per se traditionally was established to represent the best interests of the people. I think if government—and it does not matter who it is, so we do not have to get into the partisan aspects of this debate—is truly doing its job, then we are fulfilling the responsibility to the best of our ability in the public interest.

I think where I would disagree with you is on the privacy protection issue and wanting to extend the invasion of that privacy perhaps into the private sector, corporations and companies. I would have a lot of difficulty with that unless I knew the specifics of what you want to use as an example. But in dealing with the access to government reports, for the most part I can agree with you.

I thought it was a very good example you gave about being denied the reports that are filed by the soft drink industry as to its percentage of refillable versus non-refillable containers, because that kind of information is in the public interest. It is not just a fad thing to do with the environment now; it is a very serious matter in the long term for all of us. The cost implications are there, both to the environment and to the pocketbook directly. I think that kind of example that you give is one where it seems to me that it is ridiculous that we cannot have access to that kind of report. Obviously if some government ministries have some of these reports, which are supposed to be in the public interest in the long run, then we should have access to them and I certainly concur with you.

I share your concerns about some of the exemptions. I should tell you, however, we do have a note here from the Management Board of Cabinet, over Frank White's signature, that was just given to us about the number of requests. You thought perhaps the number of requests were down now from the previous year because of the difficulty in getting those requests fulfilled, and in 1988 there were 2,453 requests; in 1989 there were 5,512.

**Mr Rubin:** I realize that.



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**Mrs Marland:** What is interesting is the fee differential. In 1988 the average fee was \$5.22 per request and in 1989 it was \$10.03. But then the explanation goes on and it is the explanation I am sure you will have a lot of fun with in the future. I am assuming, because this was distributed, that it is public, now that I have given half of the contents.

**The Chair:** Yes.

**Mrs Marland:** It is not marked confidential, so I thought I was safe.

**Mr Rubin:** I am not in an in camera session.

**Mrs Marland:** But what is really interesting here is that the Ministry of Revenue in 1989 collected fees of approximately \$32,500, 305 requests dealing with property assessment from market researchers and consultants. "If these figures were subtracted from the 1989 totals, the average fee per request would drop to \$4.38" from \$10.03. Frankly, I do not think it matters whether it is market research or a consultant or Mrs Smith or Mr Jones. I found that comment a little interesting.

The area that I want to ask you specifically about is you say that we need some basic guidelines. I want to ask you about whistle blowing. The reason I would like to hear you enlarge on that a little is that I personally was involved in an issue as the critic for Citizenship for our caucus when we were dealing with the Ontario Human Rights Commission and I think we had a perfect example there of whistle blowing. We ended up probably uncovering 60% of what was behind the problem at that time in the Ontario Human Rights Commission, which in itself was ironical since this is the very commission that protects everybody's rights as employees and yet there was a very serious question about employee practices at that time.

Here we have a government arm's-length agency, which the commission I think can be described as. We had people who were willing to come forward. We had an interministerial committee review the commission and the interministerial committee was made up of two senior staff people from two other ministries. Even after we went through this whole process, the total picture and the true information were not all available even to myself as somebody who stood in the Legislature and asked the questions.

So I am wondering what, through your experience, you would suggest as basic guidelines to encourage whistle blowing and yet not have it make the whole process ludicrous, but where people are not at risk, because people on the inside who may well know of a situation that is serious, that should be corrected, are in fear and trembling of losing their jobs or their promotion or other opportunities of their employment.

**Mr Rubin:** I think, first of all, it may have to be a separate bill, but I think provisions have to be in the freedom of information bill tying it in. By the way, there should be an oath of service rather than an oath of secrecy of public employees, to begin with, written right into this bill.

But if people really have tried all the available routes—they have gone to their superiors or those people's superi-

ors in good faith with a problem, I mean a serious problem of health, the safety, wasteful practices and so on, and they are not getting anywhere—then right now there is no type of legislation that can help protect them. There are different avenues towards perhaps remedy. One thing is for sure, unless you build in some protection for those individuals, say, through an office of special counsel, they are not going to have any projection.

I guess one of the key issues is, does the person release the information directly to the public and fall through this, hopefully, safety net or does the information first of all, in a sense, get vetted through the special counsel, which sounds bureaucratic.

**Mrs Marland:** Through the special what?

**Mr Rubin:** Through the special counsel, through a special office as in the United States or in other jurisdictions. I should, by the way, say like the state of Michigan. Although it is not the best bill, for instance, it has whistle-blowing provisions for the private sector too. We are talking about helping to facilitate and protect people who are not just government employees.

I do not feel that I could go too much further other than to say that I think the process is to examine the best from different jurisdictions. I would, though, if I may, just want to respond to three other things very briefly that you said.

In terms of SkyDome, which is one of the most troublesome agencies that I have dealt with in the last few years, it can never seem to make up its mind that it is a public crown corporation. It thinks it is a commercial corporation, and it certainly has acted as one. There is currently an internal review of it. I would like to have that more under public scrutiny, because I have not heard anything about this internal review and I think that what has happened there needs to be put under close public examination.

**Mrs Marland:** It was before the standing committee on public accounts a number of times.

**Mr Rubin:** I realize that, but I do not think they gave you everything. I have read those proceedings. In fact, under the freedom of information act, they have referred me to those accounts, and I have gotten other material. I do not think the truth and all the circumstances have been forthcoming. They are good at time delay and exemptions and too many things. I think if you want to talk about the wilful breaking of the spirit of the act, there is a first-class agency that knows how and has done it, and I think that has to be changed.

**Mrs Marland:** So as far as employees are concerned, what you are saying is that there should be a special counsel or something equivalent to an internal auditor, but someone who that person can approach.

**Mr Rubin:** No, it is an independent counsel. It is more in the functioning of an ombudsman or a human rights commissioner or an information and privacy commissioner.

**Mrs Marland:** So the individual is protected.

**Mr Rubin:** Yes.



**Mrs Marland:** I know in the United States the controller general, who has the same position as the Auditor General in Canada—that the office of the controller general in the United States can investigate any area where the US dollar flows, literally any area. So there are very broad powers of that office, and supposedly every Auditor General or our Provincial Auditor would have the same powers. In the interest of protecting the public, the information that kind of office extracts through its staff investigating the operations of government in every ministry, do you think that information should be accessible without having to go through the act?

**Mr Rubin:** I certainly see the value, if you are promoting open government, of having internal checks and audits, and the functioning of an auditor, if anything, probably should be increased. I know in the case of the federal jurisdiction, I have tried to get material or have run across material from departments that involve the Auditor General, and not only is his office not covered—it may be a little more independently set up than the provincial one or your internal auditor's—but I cannot get information from him. However, I certainly have—and maybe you do not have it built in, from what I can see, as formally as in the federal sphere—gotten quite a few internal audits, with some exemptions, federally.

I think it is an important process. I think you also have to understand—and as a researcher, I clearly do, as one who has worked inside the government too—that a lot of auditing and audit reports are done for process pushing or paper pushing. It does not really do much. It is not independent, particularly if it is internal, and sometimes that has to be borne in mind, because the quality of the record and the message can be very self-serving.

**Mrs Marland:** Do you think the solution is that we have a classification of those areas which are of compelling public interest? Should that be a basic guideline? I mean, there is a whole lot of stuff that may be of interest to Mr Rubin or Mrs Jones, because of their own particular—I am not suggesting you have a narrow focus, I am just using your name as an example.

**Mr Rubin:** I do not think I do.

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**Mrs Marland:** But there are people who have a narrow focus or they have a personal grudge because 20 years ago that ministry fired their mother-in-law or did not employ their mother-in-law or whatever it is. There are always people who carry grudges and they will follow people's careers in government for ever. They will just about follow them to the grave in order to get a reprisal for something that happened.

Obviously that is not of compelling public interest. I think the percentage of refillable and non-refillable containers, in terms of the protection of the environment, is of compelling public interest. Do you think, if we had a classification for government reports that were of compelling interest, that might be a step towards more open access?

**Mr Rubin:** If I could make a distinction, first of all, I would hate to see any applications considered frivolous. I think it is everybody's right to have the access, so I would

not question the motivation or the ability of anybody to make a request on any subject. Second, however, what I am saying is that it is not so much the "compelling"; that word legally means that it has got to be proven airtight, which means that you do not get it usually.

I understand the thrust of what you are saying, however, and I think the idea is that everything is public unless there are secondary reasons that are really on a discretionary basis, except for personal information, and can be solidly proven through harms tests or whatever, not the reverse.

**Mrs Marland:** Okay, so what you would do is you would have everything open rather than create classes.

**Mr Rubin:** That is right. Right now, there is a very meaningless public interest override. The onus of proof, and the commissioner in his orders have said that, is on me. It is on those who want to do it. No, no. The onus of proof has to be on the government as to why public interest release is not the compelling principle.

**Mrs Marland:** My colleague has some questions, Mr Chairman, so although I have more questions, I am going to yield the floor.

**Mr Sterling:** Thanks for coming, Mr Rubin. You and I have talked from time to time. This review would not be going on had section 68 not been put into the Freedom of Information and Protection of Privacy Act. That actually was an innovation which I put into the original act in 1984. I suggest that if this committee wants a further review of this act, it will require an amendment to section 68 if we want to keep this topic in the public forum.

It was always my concern that once an act was passed, however good or bad that act might be, it would not raise its profile into the public forum unless something dramatic happened. It is my view that, right now, most people do not care about freedom of information. They are perhaps more, as they always have been, concerned about privacy rights.

One area that would be of interest, because you have extensive experience both with the federal act and the provincial act—you have already commented in your opening remarks about the complexity of the provincial act. I was concerned when the act was passed with the idea that the commissioner, who was known as the freedom of information and privacy commissioner, gives the impression to the public that one would go to the freedom of information commissioner seeking information and he would help a member of the public obtain information. In fact, what we really have created under the act is a judge: a judge and jury actually. The commissioner is probably the most powerful of all freedom of information or privacy commissioners in the world in that his word is final, his judgement is final, and there is no appeal of that judgement.

Under the federal system, the freedom of information commissioner acts as your advocate. She or he is an Ombudsman. He now, John Grace, is an Ombudsman. In other words, you go to him and his duty is to try to get the government to divulge information. If you have a privacy problem, you go to the privacy commissioner, and his duty



is to try to protect your information. If there is a dispute, you go to the Federal Court and settle it there.

Do you think that we should make some fundamental changes in the structure of what our commissioner does?

**Mr Rubin:** Let me answer this way: Having experience in those jurisdictions as well as—by the way, for instance, New Brunswick and Manitoba use their ombudsmen for the information-denial appeal and Quebec has its commission. I think the best models right now are Quebec and Ontario, if I can come out in favour of something.

I do like the idea of a one-stage binding enforcement situation. I do feel, though, that a three-person—for reasons of the task but also for the reason that you get a certain personality—at least by having a three-person commission, you know the treatment received. The commissioners would not all have to hear the same case, be always together, which is important.

I think where I disagree with the current commission is more in terms of opening up the process so that it is not totally secretive, particularly at the mediation stage, which I think there has been some success with, but there could be greater success, going even beyond the terms of the act if the user was more involved than he or she is at this process.

I do say, though, that if the commissioner, who just like everybody else is subject to time delays, cannot cough up a decision within three months, then like New Brunswick, although slightly different there where you have the option to go to court or to the Ombudsman, at least there should be some flexibility that allows you to do that; or if you are arguing strictly points of law, at least you have the option of either going straight to the court or to the inquiry stage of the commission rather than having to go through the hoopla of the mediation stage.

Where I even go further than the current act is I feel that the commissioner—I do not think he or she just acts or the panel of commissioners would act just as a judge because although yes, a lot of it is appeals and therefore it is a legal, quasi-legal, quasi-judicial type of function and maybe a total judicial function and there is enforcement behind it, he or she has other functions, and I am saying they should be enhanced.

There is the education function. There are the audit and investigative functions and in fact the whole question of self-initiated complaints or appeals by the commissioner, like in a sense how they have done on the privacy side through the AIDS report or through the fax transmission report or their views yesterday on matching. It is an excellent type of tool to do it. It has nothing to do with the day-to-day appeal process, but it has everything to do with alerting people to and improving their protection or their privacy or their information access.

**The Chair:** Are we finished? Twenty minutes has more than expired, but if the parties want to use up their 20 minutes, they can go to 12 o'clock and ask some more questions.

**Mr Fletcher:** Thank you for being here, Mr Rubin. I just have a few questions waiting for clarification. You are saying that the fees and some of the costs associated with

getting information from this act are limiting access to using the act?

**Mr Rubin:** Yes, if you do not have unlimited budgets and remember too, a user has to put in his own time and cost too, and I must stress it is not, at least in my case, primarily always for commercial gain. In fact I do not mind going on record as saying that at least under the Ontario act I am just like what some governments talk about, in a large deficit position if I were to look at the cost balance sheet. When I do not apply myself totally for those purposes, I apply primarily what is, I know and believe, in the public interest sometimes. Most people are not going to pay you 600 times for 600 applications.

The fact of the matter is yes, because now it is \$30 per hour. If you get any records that are exemptable and that surcharge comes into effect, it can add up even if you have a narrow request to \$100 to \$200 or more. Treasury and Economics, which is one of the other departments I singled out, was famous for giving me these huge fee estimates, was unwilling to discuss or negotiate even an airing of the application. I get bills for thousands of dollars.

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I notice one of the members of the committee who laughed was the former Minister of Labour. His department at one point wanted some \$25,000—fortunately, I did not end up paying it—for records on how the Occupational Health and Safety Act was actually working. It was partly because of the records being in a disorderly fashion, because some were manual and computer records were not retrievable exactly in the fashion they should have been. These things do definitely act as a barrier.

I am not saying it happens in every case, but it adds up. I, as a regular user—and I know there are people who are one-time users—come up against this continually. These bills add up. There are some statistics that show them being withdrawn and abandoned. Yes, those things may be for other reasons than fees, but I think, on the whole, it is a lot for people. They do not even bother coming forward to apply because they know that they can be subject to fees.

One good advantage of the act, unlike the federal act, is that there is no application fee because at least you get in the front door. But once you get in the front door, you find the highest fees in Canada.

**Mr Fletcher:** Another question: As far as the government is concerned, what do you feel should remain confidential? Nothing? It should be completely open?

**Mr Rubin:** Well, I would like to walk in and examine every cabinet minister's records on a daily basis. In fact, by the way—

Interjections.

**Mr Rubin:** Well, why should you not? What is the problem really? Take cabinet agendas. I looked at these federally for the years, whatever it was, 1953 to 1968. Twenty years later is their provision. They had 13 exemptions there, all personal information. There is nothing in there. They are all factual headings. Why should that not be released the next week? Why is it in an exemptable category?



Yes, there is certain sensitive personal information that I agree has to be kept exempt. There is a certain negotiating stance at times that can be harmful to government interests. But I am not ready to go to the extent and the broadness in the many ways of saying no that the current act provides for. Even though this act, unlike the federal act, for instance, has gone to a little better extent in trying to define the exceptions to exemptions under each exemption, I do not think it has balanced them sufficiently. Some of them, as I say, are just totally inappropriate.

**Mr Fletcher:** One more question, Mr Chair, and that comes from the whistle-blowing theory. A hypothetical case: I am an employee and I want to blow the whistle on someone who is doing something wrong. I have to collect information and make sure that I have the information that can substantiate that. Are we not just creating another system of collecting information and using that information without a person knowing about that information until it is time to confront the person with the documentation?

**Mr Rubin:** If you feel you are in that position, I think you have to make an effort first within the system to your superiors and in written form. I think you have to have a fairly good, solid record that you are not just having an axe to grind, it is not a petty matter and so on, you really have the public interest in mind and you have tried within the system and it failed. I certainly have had people like that come to me and I feel they need protection, because afterwards they cannot work in those places any more. Their colleagues treated them like—

**Mr Fletcher:** I am just going to carry this point one step further. That is, I go to my supervisor. There is something going wrong. My supervisor or the company I work for or the department I work for still has to collect information and do an investigation on this person without that person knowing. Is it not still the same thing, where we are collecting information on a person without him having access to it, without him knowing there is an investigation going on? My only concern is that it can go a bit far.

**Mr Rubin:** I think I understand what you are saying. I do feel, though, that a person who is being affected by this has to know that other people are investigating him. As a result, I have seen people who have tried to release information being subject to what I would best call kangaroo-court procedures by their colleagues. It is just disgraceful. They do not even use the due process. They do not have any inclinations except to protect their minister and their own hides. In a few cases, it has had damaging and permanent health effects on the people.

**Mr Fletcher:** I would hate to see that happen.

**Mr Owens:** I could have saved you \$25,000 if you had contacted me. I could have told you how the health and safety act is not working and what we would like to do to change it.

I would like to ask you with respect to your statement about the SkyDome and troublesome agencies, is the SkyDome the most troublesome agency that you have had to attempt to get information from?

**Mr Rubin:** Since they reach almost up to the sky, yes, they are the worst that I have experienced. I think I men-

tioned giving honourable mention to Treasury and Economics. I would certainly give equal billing to the Ontario Securities Commission, which I think, by the way, because it can play an important role in information disclosure in the private sector, itself has to be reformed in its own openness so that certain transcripts and other things are not always kept in secret.

I would hesitate to totally name every agency that I have dealt with. Let's put it to you this way. Over the last three years too, there have been agencies in Environment or Health that have gone one way or the other. At one point they were great for whatever the reason—change of personnel, higher or lower—and at other times they have not been.

But nobody has quite been on the same scale as the few agencies I previously mentioned. Yes, there are some agencies that I think have really tried well under the act to go even beyond the terms of the act. I think they understand that the word is service.

**Mr Owens:** Again with respect SkyDome, how many requests have you made for information?

**Mr Rubin:** I could not tell you offhand the exact number, but it is certainly a few dozen and I certainly have over 15 appeals in on them.

**Mr Owens:** Of the dozen or so, how many have been granted without going through the appeal process?

**Mr Rubin:** It does not mean just because they have exempted a few records or done something wrong that every time I appeal. I am somewhat selective. I do not know if the question is fair. I will give you an example, if you want, of when I got something, if you guys want to have something a little lighter.

I asked what they were doing about the incidents in SkyDome of certain exhibitionist behaviour in the hotel. Yes, I got a full reply. I got the hotel's statement to people who were staying there, which they had to sign first, saying that they would not even think about committing any improper acts and opening those blinds. So at times you can get full release—and something which government does not usually do—it can even be a little light.

**Mr Owens:** What types of information would you be requesting that the corporation would be so sensitive about releasing?

**Mr Rubin:** They signed a lot of long-term monopolistic deals with various people and who gets which orange juice and who gets which right. They are sensitive to that area or the draft proposals for the partnership consortium of SkyDome type of deal.

They have been generally sensitive ever since the first time that I walked in and looked at the records. All of a sudden I was told that I could not have most of those records after viewing them. I think they realized that this act might be something that is not in their interests. Some of the information in this case that has come out is because of court actions, not because of their voluntarily wanting it to come out.



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**Mr Owens:** With respect to your statement about fees being prohibitive as opposed to enabling people to participate, I had asked yesterday and Mr White has kindly responded to my question about the fees. We talked about the average fee being \$10.03 in 1989. However, you seem to be coming away with figures that have a couple more zeros attached to the end of those fees. How is that different?

**Mr Rubin:** One of the simple explanations is that either I have some that are higher, or the ones that are really high I did not follow through on because they were too high, or I narrowed it down or negotiated or whatever.

**Mr Owens:** So there is an avenue for negotiation on fees?

**Mr Rubin:** If you have a bit of a flexible department. Some of them get very moralistic and firm and rigid about that. If you want it shipped to Ottawa it will cost you \$11 and you will have to pay that before you look at it.

**Mr Owens:** So we do not have a standardized policy for fees. It is up to the individuals?

**Mr Rubin:** We do. In fact, what we have, which the previous government passed, is to make the fee collection mandatory. I have people currently who want to be a little more flexible with me, say, "Gee, if I don't follow these fees, the Provincial Auditor is looking over my shoulder and he'll say, 'Why didn't you get that guy for cost recovery like you're supposed to?'"

It is more than a subtle change from mandatory to discretionary because of that very fact or because the commissioner's powers are now called into question. Some of his key decisions, before he left, were on the whole question of discretion and the whole question of whether the department hold the sole discretion. The commissioner said: "No. You've got to follow through on certain things or else you're not properly fulfilling your duties under the act." In fact, order 81, which I attached in those notes I gave you, was a key one towards grounds. I think if a government agency challenged that today, if the issue were fees, it would win.

The whole ability of the commissioner to function in a certain key area has gone by the wayside because somebody decided to put the screw on users and to put the screw to the lowest common denominator on departments to say: "You collect. That's your job. You do it or else. To heck with the user."

**Mr Owens:** If you were going to consolidate the presentations you have made verbally as well as your written submissions into, say, three key areas with respect to the legislation and amendments this government should or would like to look at, what would be your recommendations to this committee?

**Mr Rubin:** I would first say that I do not know if you will be the one designated or what, because there are several other committees, from the conflict of interest to the whistle blowing and other measures that may or may not deal with these. I would hope, perhaps sensibly, even if different ministries are involved, they could all be dealt

with as a package even if they are not all part of one omnibus bill, that the broadening flowering of open government and of privacy protection—because, as I said before, it is not just a question of access. If you noticed, I had some specific things to say on computer matching. That would be one.

Second is reversing the whole mentality and legal spirit of the current freedom of information act, particularly on the openness side, so that openness prevails.

Last, because I would only be doing myself and others an injustice if I did not say it, is making a plea for stronger privacy protection not of the current type that exists but of the type that most people are so worried about with the impact of technology and how it affects their lives. Although a lot of people say they have nothing to hide or that they are willing to give their VISA card or their social insurance number and so on, I have seen too many cases where there is an end effect, and where I think government has a role to put in some minimal protection. In fact, in answer to one of the previous member's questions, even the OECD European guidelines or the American Health, Education and Welfare guidelines on fair information practices, which are well known, are a very good start towards this code business in the private sector that I am talking about.

I do not think that people in companies or in small businesses or in voluntary groups should get really uptight and say: "Oh, my God, big bureaucracy is going to come and get me." I think they should say: "Yes, we should operate this, too. If we don't, our employees"—employees too should be subject, unions too—"should have some recourse." I think it is only reasonable that if you are asking somebody to do one thing, ask everybody else to do it.

**Mr Owens:** You have probably touched on a sensitive area for most people and that is with respect to the collection of data by private companies. I am continually amazed by the depth of questions that are now coming in the mail for surveys and things like that. You have to wonder where this information is going and why they need it and who they are going to share it with. I agree that we certainly need to extrapolate the provisions contained within this legislation to harness these types of private agencies, to ensure, as you say, that if one level of society is expected to follow a code then that should be followed by the rest of society.

**Mr Rubin:** It is one thing for them—I agree with your example—to help influence and further, by using technology and invading your home, your marketplace decisions. It is another thing, though, for instance, for them to conduct a battery of psychological and personal testing on you as a potential employee, some of which has no business being collected, some of which may lose you that potential job or, when you have the job, be carried wrongly throughout your career. It is that kind of impact I am in part talking about, or that employee sharing that knowledge when the person has, say, an alcohol problem or something, with other people it was never fully intended for. So there is something to this.



**Mr Owens:** Absolutely. I think more and more that you see corporations take a look at employees who are on the "promotion track" and subject these folks to that type of psychological testing. The question comes out about why that is required and what people do with that information. The holders of the information at this point are certainly not constrained, other than by corporate ethics, from sharing that type of information with other individuals, be it a manager, a supervisor, or even a co-worker around the coffee machine.

**Mr Rubin:** This is being proven in the States where they have actually started to pass some legislation. Let's face it, unfortunately—or however you want to put it—there is a large corporate concentration in certain areas now, say in the consumer credit area. You are not talking about small companies; you are talking about immense sharing capacity and trying always to look for newer areas of profitability, which means the sharing of certain personal information. I think, for instance, in that country they are starting to say certain ground rules have to be placed on these large companies if people are going to have any minimal rights to their own information which these companies hold.

**Mr Morin:** First, I want to congratulate you for the excellent presentation you have made. I want to congratulate you also for taking this attitude of being a watchdog on what this government is doing, of what we have done in the past, too. But paying you a compliment does not mean I totally agree with everything you have said.

**Mr Rubin:** Now for the bad news.

**Mr Morin:** I just want you to elaborate. On page 5, you mention, "Privacy provisions should be extended to the private sector where bodies are regulated under provincial jurisdiction, with requirements that all private bodies adopt a privacy code of fair personal information practices." Are you not dreaming in colour?

**Mr Rubin:** Even in similar committee hearings at the federal level, in the justice committee, recommendations were made to at least minimally extend to the private sector the application of the privacy act to those regulatory agencies under federal jurisdiction, such as my dear friends Bell Canada or other companies that fall under that jurisdiction. So there is nothing—I would not want to use the word—revolutionary about it.

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I guess all I am saying is that I can appreciate that the private sector may not want to consider everything interfering with their ability to operate freely in the marketplace. But the fact of the matter is that every individual is entitled to certain minimal protection, and I do not think it interferes at all with their ability. If anything, it helps improve it. I feel that if other jurisdictions have entered into this, I do not think they have had companies turning over the doors. In fact, the federal government is trying to encourage a lot of governments—rather in a slow process, I might say—to adopt the OECD guidelines but on a voluntary basis. I am afraid that does not always work. You need some enabling legislation, which I think is what the federal justice committee was suggesting, to help this process

along, or in 20 years you are going to have most of the major corporations without privacy or fair information practice codes, whereas I think people would like to see that now.

**Mr Morin:** You referred to the Ottawa Senators, of not being able to obtain the name of the directors. Have you applied for it? Were you turned down?

**Mr Rubin:** I have not directly applied for it, but I certainly—

**Mr Morin:** You have spoken to Mr Durrell?

**Mr Rubin:** I have not, but I certainly feel it is an excellent example of minimal information disclosure, because at stake is a whole community, a whole area, an agricultural area, and its future, and it is of interest to the citizens of Ottawa-Carleton. Fortunately, now there is a separation, you might say, of private sports industry and state. But on the other hand, I think even if there had not been that situation—it is like SkyDome or other private sports clubs, too, such as Maple Leaf Gardens. There has to be some minimal information disclosure.

Look at how many people utilize those facilities, and the public helps subsidize a lot of these facilities. There has to be some idea of what is going on in these places to protect the public interest. As well, the company should recognize it is in their best interests. Could the Ottawa Senators get away with that if they had to file a prospectus with the Ontario Securities Commission? I doubt it. Numbered companies are one thing, but at least you would have a numbered company.

I have not been divulged anything. It is wrong. We are not in that century, we are past that. Particularly now, it is absolutely necessary that they do it, or the public may never fully back a hockey team.

**Mr Sorbara:** I want to apologize to the witness for having arrived late for his presentation this morning, and for having to step out for a period of time during his questioning. My colleague to my left, Mrs Marland—colleague and friend, she reminds me—pointed out that you had made some comments in the press a couple of years ago about the expense of getting information out of my own ministry during the period I was Minister of Labour. It is interesting. That was the first time I had seen that comment, although there were periods when the requirements on the freedom of information co-ordinator in the ministry were very significant just in terms of volume of work.

I have had an opportunity to look through some of your materials and there is no doubt that the whole question of freedom of information and protection of privacy is something that is very important to you and almost a life's work. There is a lot of reasonable information in your presentation and some good suggestions, frankly.

I suppose you were here yesterday and heard the discussion around the question of protection of privacy. It seems to me that the protection of privacy, and the management of data in a post-industrial economy with protection of privacy in mind, is going to be one of the very significant challenges of government not only in this area but in all of its aspects.



All of its emanations are going to be challenged over the next medium and long term, particularly as the ability of computers to voluntarily speak with one another and compare information and then provide results becomes more and more technologically feasible. So although I am subbing on this committee, I am going to urge the committee to pay attention to the recommendations that you have made, not necessarily to adopt them all but to pay attention to them.

I think it is important that Ontario be a leader in the development of public policy in this area. My experience as Minister of Consumer and Commercial Relations confirmed me in that view, particularly the management of data that large international and transnational entities have about the individual transactions that individual Ontario consumers make whether with credit cards or health cards, or when cards that we have not even imagined come into being.

I guess I regret and I want to express regret about some of the material that is contained in your document. You do not acknowledge, for example, that it was the previous government that developed this act and put it into place, although you go on at some length about the mistakes that it made after it put the act into place. As you are a person who has made a life's work out of making sure that information is accurate and available, I was disappointed, I must tell you, in some of the information—in this case I would say information and would want to put it in parenthesis—contained in your document.

For example, referring to a document entitled *Secrecy Still Prevails in Ontario*, in that document you suggest that "the new Ontario government has not issued directives that change the secrecy practices of the former administration." I think that is an interesting and a fair comment, although I think it was the former administration that began the practice of putting into the statutes of the province the requirement to provide the citizens of this province with accurate information about the way in which they develop public policy and administer public policy, but that was a fair comment.

On page 4 of your document you make an allegation that I think is rather unfortunate in this context, because I think you want to portray yourself as someone who is interested in accurate information. In the second bullet of that document you suggest that "privileged access to some Ontario cabinet ministers by those paying to attend Liberal Party economic advisory forums or expected access by those giving sometimes questionable political donations."

You say that you allege that was going on. Do you have any information that I do not have in this regard? Is this an allegation or is this information? Is this accurate, based on information that you have secured or is this innuendo? Is this just part of a blanket condemnation of the previous administration?

**Mr Rubin:** I think there were some public reports on this. I do not know how widespread it was, but it certainly was a situation that was there, let's say it was. I was a witness here before, several years ago, and certainly would recognize the government that presented the legislation.

I would also say that you, sir, were the sparkplug in terms of looking at the Occupational Health and Safety Act that led me on, because you were kind enough to give me the first computer printout for free and led me to believe that I would be getting the rest of the information, not the \$25,000 surcharge. Perhaps the department went ahead and I guess that is one of the things.

I am not asking for ministerial interference in these things, but I am sure thinking that there is a need for better political direction, and that is what I am suggesting to this government and to the committee, that if the spirit of the act is going to be maintained, those who ultimately are responsible should be aware of what their own departmental officials are doing. In fact, by the way, that case led to the famous order 81, so it did in the end serve more than one purpose, including not eventually getting the information and not being charged the \$25,000 under the order of the commission, mind you.

I realize I cannot say everything. I am trying to convey a plea and an advocacy stance. I am not trying to be, I do not think, deliberately inaccurate. As a researcher, I usually try not to. I said I would not hark on the past. I would like to, and I think you said it too, really look towards a real change in this area that can excite the whole committee and can motivate the government. I leave that message for sure with the committee.

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**Mr Sorbara:** I think the committee is probably hearing that message, although this is a committee made up of politicians, so it pays, I guess, perhaps inordinate attention to political messages. I would describe your comment on page 4 as a political message rather than a substantive, administrative or policy message.

There is a wonderful line in Julius Caesar which goes like this, "The evil that men do lives after them, the good is oft interred with their bones." I expect that is going to be the case as regards the former administration, that the evil that we have done—if we did any evil—will live after us and all the good will be interred. That is okay. That is fair game. That is politics.

I must say that I find that in matters of public administration the idea that anyone would have privileged access to a minister of the crown in any democratic jurisdiction based on ability to pay would almost be criminal in its character. It would be in my view tantamount to selling influence or selling access, and of course I think that is probably prohibited by the Criminal Code of Canada, and certainly is reprehensible in any western democracy that I know about, although those allegations were part of the currency, certainly, of our administration and part of the currency of the provincial election which ended on 6 September.

We all accept the result of that election, but if I have anything to do with it, during the next while this evil that lives after us will be dealt with, will be responded to or will be put to rest. It is something that somewhat haunts.

I wanted to ask you a question about these two aspects of the legislation as it stands now: freedom of information and protection of privacy. You probably heard me say



yesterday that this statute and the public policy direction was rooted in a desire to come to grips with the inaccessibility to the records of government and the documents of government. It was based on work done primarily by Jim Breithaupt and resulted in a bill that we introduced. Although I came into the process late, it seemed to me that the protection of privacy aspect of it was an afterthought. It was something that was absolutely necessary, given the direction that the legislation was going in in terms of access to information.

It went like this, one assumes: "We are going to make access generally available." Then there was a rather stark realization, "Oh, my God, that means that people's privacy could be invaded, so let's superimpose on that this issue of protection of privacy," and that was incorporated into the statute. Do you see down the road a severing of these two statutes, that is to say, a statute dealing with freedom of information and a separate one dealing with the protection of privacy?

The reason I ask that is because typically in government administrations when there are competing interests—freedom of information on the one hand, protection of privacy on the other—a government often has those two interests compete under separate statutes or even under separate administrations. For example, we have the Ministry of Industry, Trade and Technology arguing for the interests of the industrial engine, and we have the Ministry of Labour saying yes, that is okay. But in doing that we have to be careful about the interests of the working people who will work in those industries. So we do it administratively and we do it by separate statutes.

What is your view on that? What do you think the government should be doing in terms of having these two competing interests compete successfully with one another ultimately for the interests of the people of the province of Ontario? I want a yes or no answer.

**Mr Rubin:** First of all, by the way, just to answer one other thing I failed to mention before, I certainly fully recommended the coverage of politicians in the Legislature under freedom of information. However, to answer your question, yes, I do see the eventual separation, partly because they are competing. But I would find it very un-

fortunate if there were not some mechanism through the commission and so on to still retain that balancing act.

I think the history in this country has been different, unlike, say, Europe where there was a separate emphasis primarily on privacy so they got data protection acts passed, and maybe access comes next. You had the wedding of the two concepts at the federal level, and then at the Quebec level, here and elsewhere. That sort of gave people the impression—it is just like federally, and even provincially, you have other acts called privacy acts or protection of privacy acts that have nothing to do, in a sense, with privacy. The protection of privacy act is the wiretapping act federally, and the western provinces have privacy acts that are just sort of a minor legal enabling right to sue in certain circumstances.

The fact of the matter is I think a lot of people are under the misimpression that the wedding of these two took care of matters beyond access to personal records, that it took care of privacy invasion. That is partly why, although I hesitate to say the divorce should be quick, you need fallback things such as in the United States, where they have the Office of Technology Assessment. Among other social implications of technological change, you have privacy implications that then can be more intelligently pursued, and in the public interest, protected.

What you have in the United States is a fairly separate but useless, not too well received privacy act, and a separate freedom of information act, but you have a host of other things like a student financial records act, consumer credit and so on and so forth, just like this province in fact in part did in the consumer credit area where it had special acts just to one thing before. I think that approach, hopefully in an omnibus-bill kind of sense, is appropriate.

**Mr Sorbara:** I do not have any more questions.

**The Chair:** Thank you, Mr Rubin, for appearing here today. The Chair certainly allowed a certain amount of flexibility today. It was only a half-hour presentation and somehow we stretched it into an extra hour and a half. The Chair will exercise that degree of flexibility, time permitting and with consensus of the committee here.

The committee recessed at 1158.



## AFTERNOON SITTING

The committee resumed at 1406 in room 151.

## ONTARIO HIGHWAY TRANSPORT BOARD

**The Chair:** I will call the meeting to order. I would like to call the first witness from the Ontario Highway Transport Board, Barry Smith. Please come forward. You have about 15 or 20 minutes for your presentation; a little longer, if you like.

**Mr Smith:** My name is Barry Smith. I am the chair of the Ontario Highway Transport Board. I have prepared a written submission, which I understand all of you have. I am prepared—and I would seek your guidance on this—to read it, or I can summarize it much more briefly than you can probably read it and make myself available for questions. What would you prefer?

**The Chair:** What is the consensus of the committee: to summarize it or to read the brief? I see the consensus is to summarize.

**Mr Smith:** The first part of the submission deals with general background on the board and what we perceive to be the purpose of the legislation.

The Ontario Highway Transport Board is an administrative tribunal, quasi-judicial in the style of operation, and we have jurisdiction in essentially two areas: truck transportation and bus transportation.

About three years ago, the truck industry, as you probably all know, was deregulated and at that time new legislation was passed. Following the passage of that legislation, there was a change in procedures for filing applications for trucking licences. Prior to that time, the licences had been submitted to our board. After 1987, they were submitted to the ministry, and it carried out some processing and determined an administrative function, which was whether the applicant was fit to hold a licence.

Following that determination, the matter was published in the Ontario Gazette, and if there was an objection, then the matter was remitted to our board for further processing. In that processing, we would either deal with it in the context of a public interest hearing or not. That is where the problems began to arise, because in remitting the matter to the board, the application form which was filed by the applicant was censored considerably and we received an application form with much of what we considered to be the relevant information whited out or blotted out. That was the only information we had or that anyone who wished to oppose the application had in their files. So that presented the problems.

I think the simplest thing for me to do to describe this problem is to take you to the bottom of page 4. If you would not mind, I will read it; it sets out the problems we faced. Starting with "Applications for Operating Licences," in the bottom paragraph on page 4 of the submission:

Applications for operating licences under the Motor Vehicle Transport Act were sent to the board in censored form after the fitness determination had been made by the

ministry. Relevant information relating to the applicant's identity and proposed operations had been removed. Addresses had been deleted as being personal information, and information concerning the identity of shareholders of a corporate applicant was withheld on the basis that it was protected third-party information. Obtaining consent was impractical. Information on truck fleet sizes and terminal facilities was also kept confidential. The censored form was placed on the board's file, which was available to the public, and notice of the application placed in the Ontario Gazette with instructions to be followed for anyone wishing to oppose the granting of a licence.

Part II of the act in question requires that the board make a determination about the effect of the proposed operations of the extraprovincial undertaking on the public interest. Opposing parties, respondents, have the burden of demonstrating the detrimental impact to the public interest. Neither the board nor others can carry out its responsibility and properly address its jurisdiction unless it can identify the undertaking and assess the type and scope of the proposed operations.

The board found itself faced with several hundred applications, none of which in any particular way could be distinguished from any other. The board was often faced with the task of dealing with numerous respondents under a legislative regime that was intended to permit all participants, including the board, to focus on a select few cases of importance. The respondents, being no more able to distinguish among applications than the board, provided the board with broad-brush evidence aimed at the information on the application that was available on the record. And that, of course, was the censored form. The board continued to be faced with a situation where the only way to identify those applicants for whom a public hearing was appropriate would be to order hearings for all, and permit the hearing process to provide the forum for the disclosure of the necessary information. The intent of the legislation had been distorted.

Opposition was filed to nearly all applications. It is our understanding that this was done, at least in part, in the belief that status as a party would permit a respondent to have access to the uncensored file. The necessity of dealing with opposition on every application that was filed and then later developing an ad hoc process for obtaining information imposed an unrealistic workload for the board and extensive delays in dealing with the applications.

As initially the name of counsel or a contact person was omitted as personal and confidential information, errors in sending letters and decisions to the proper person occurred. Indeed, one application was nearly dismissed when the applicant's counsel failed to appear, when it was discovered that the confusion derived from the board's failure to notify counsel, whom the board did not know existed. In short, the failure to disclose certain information hampered the board in carrying out a traditional adversarial process at a public hearing.



This was the situation and the problems we faced. There was an appeal launched to the commissioner, the matter was heard and the matter was resolved in the board's favour by the commissioner. I have given you the reference there—it was order 53—and I have given you the file number. I have the matter here—it is a rather lengthy file—if you are interested in the details.

It is our submission that this is not a practical approach to this type of problem, and we think it could have wider application to other tribunals as well.

The board's submission goes on to suggest a couple of areas that you may want to look at if you believe that the problem I have described is of sufficient importance. That is the summary of the report.

**The Chair:** Since we have about an hour and a half before the next witness appears, we could allow up to half an hour for questioning from each party.

**Mrs Marland:** Or we could phone the next witness.

**The Chair:** Or we could phone the next witness.

**Mr Smith:** In my defence, I think I indicated I would not be long.

**The Chair:** I can allow up to half an hour for each party for questioning, if they so desire. I think the rotation this time is with the government party.

**Mr Owens:** I do not have any questions at this time. I would certainly like to reserve our time, though, as we move through the rotation. We will pass over to the opposition.

**Mr Morin:** We do not have any questions, either.

**Mr Owens:** We appreciate the presenter's brevity, however.

**The Chair:** It appears there are no questions.

**Mr McClelland:** I have a question, about the suggestion you made with respect to quasi-judicial bodies, tribunals, as a general statement that a possible solution would be naming the chair of the tribunal as the head of the institution for purposes of freedom of information.

**Mr Smith:** I hate to interrupt, but can I qualify that?

**Mr McClelland:** This may be what I am looking for anyway, the qualification, so please proceed.

**Mr Smith:** At this stage I am only suggesting that that be studied. I have not done any in-depth study. Really, the focus of this submission is to identify the problem, but it appears to me that is an area that is worthy of some study.

**Mr McClelland:** I appreciate your comment. I was just wondering, within the context of that type of solution, if the chair of a particular tribunal or perhaps another individual who would act as a constant for purposes of head of the organization—in other words, in a situation where boards are convened from time to time and place to place from a pool of chairpersons, do you think—given the fact that you have not really studied your thought through carefully; it is a first impression and I recognize that; I am not trying to put any other weight on it other than just your first impression, opinion, with respect to the appropriateness of having the chair of a given tribunal or an individual representing a quasi-judicial body who would supersede or

sit in the position for all chairpersons of various tribunals which may be sitting from place to place and time to time across the province.

**Mr Smith:** Certainly that would address one of the major concerns, that is, to have someone who appreciates, I suppose, the role and how an administrative tribunal functions. In this submission, I hope I have conveyed the message that openness is probably even more important to tribunals than to other ministries and agencies, particularly those that perform a quasi-judicial function. I have attempted to give you some precedent, some reporting that supports that proposition. Therefore, your suggestion would certainly have merit in that you would have someone who would appreciate this particular problem.

**Mr McClelland:** Beyond the scope of your own particular body, the Ontario Highway Transport Board, are you aware of similar problems? It seems to me from the scenario you have given by way of example, it would be, I can say this, obvious, not knowing that in fact the situation exists. But clearly—and I agree with you—the intent of the act is distorted in terms of this application with respect to tribunals. Are you aware of other boards—

**Mr Smith:** I sit on a committee of all chairpersons in the province and I raised this at one of the meetings, and no one had this problem. It could be for two reasons: One is that their respective ministry did not deal with it in the same fashion as the Ministry of Transportation. Probably more important, though, under our previous regime we received the applications and we had control of the applications. Under this new regime, the applications go to the ministry. In the report, the ministry was quite candid that it wanted us to have the information but believed it was constrained by the act. They were also concerned about placing the minister, who is the head, both the head of the ministry and the board, in a position of personal liability, as they understood it. This act imposes a personal liability on the head—financial burden. I hope I have that right, and there are others here who probably know it better than I and they will correct me, but that is my understanding. There is some personal liability or problems with it, so they did not want to put the minister either in an embarrassing position or a financial one. They wanted to be overly cautious. If it was not within their jurisdiction, I do not think they would have the concern.

To get back to your specific question, I do not know of any other agency which had the problem, and I think it was because of either the difference in handling it or they do not have this division of administrative responsibilities on the application. Either it goes to one for the application and they deal with it, or the application is made to the tribunal.

1420

**Mr McClelland:** Mr Chairman, I would just like to suggest that it might be something that would be worth looking at for consideration if indeed it is, as Mr Smith has suggested, a process of handling peculiar to the Ministry of Transportation, so we can really look at the act within the appropriate context. It would become a procedural as



opposed to a substantive issue, to be addressed accordingly. I thank you for your help on that.

**Mr H. O'Neil:** I have just a general question. When the Ontario Highway Transport Board meets to make decisions on different matters that come before it, are all of those matters public? In other words, do they take place before the public or do you have meetings that are taken in camera?

**Mr Smith:** Everything is in public, with certain exceptions. We have the power to go in camera at any given time. That power is rather limited in use. It often occurs in the hearing and we will go into camera where possibly counsel who represent the various parties are present or when we deal with financial information or sensitive business information.

As far as our deliberations go, the decisions are made not by the full board but only by those members who participate and sit on the hearing. Of course, their deliberations are made in private, much the same as judges would deliberate a matter in their chambers. They would not invite the parties in, but they would discuss it among the members of the board who actually heard the evidence.

**Mr H. O'Neil:** Those discussions take place, say, among the board members themselves, and the public is not privy to that.

**Mr Smith:** Yes.

**Mr H. O'Neil:** Are there minutes kept of those discussions?

**Mr Smith:** No.

**Mr H. O'Neil:** They are not. If somebody objects to the decision that has been made by the board, would those discussions at that time possibly come in as part of evidence in an appeal?

**Mr Smith:** No.

**Mr H. O'Neil:** So how has the public knowledge of how you may base your decision, except what you want it to know?

**Mr Smith:** The last part of your question has me hung out, but let me explain. By law, we have to issue a written decision with reasons, and the reasons are supposed to set out the actual reasons of the tribunal. The conversations that take place in discussing it in chambers—they would never have access to those discussions. In every case they would be oral.

**Mr H. O'Neil:** Do you agree with that process? Do you think it is a good one?

**Mr Smith:** Oh, yes, I think so, because otherwise you would not get the freedom to discuss matters. You discuss a whole host of things. One of the things you discuss, the evidence, is the credibility of witnesses. That is a discussion that would take place among the members themselves, whether they thought the witnesses were credible.

**Mr Villeneuve:** Thank you very much for your presentation. Reregulation or deregulation occurred about the same time more or less as the Freedom of Information and Protection of Privacy Act came in. What happened? What is the difference between the before and the after? Can you

cite an example of what might not have been available before and now is, or vice versa?

**Mr Smith:** You mean with respect to the reregulation of the trucking industry?

**Mr Villeneuve:** Yes.

**Mr Smith:** What happened in the trucking industry had sort of a rocky history. Before reregulation, anyone seeking an authority to move goods on the highways in the province of Ontario would apply and fill out an application form which went to the Ontario Highway Transport Board. We had all the relevant information; it was part of the document we received.

**Mr Villeneuve:** Which was not available to anyone other than the board?

**Mr Smith:** Which was available to everyone. It went on our public record. Of course, anyone had access to that and that was the basis of commencing a proceeding.

After reregulation, a new administrative procedure was adopted whereby this application form went to the ministry. In the application form it would set out such things as the name of the applicant, the address of the applicant, how many trucks the applicant had, how many warehouses he had, how many terminals the applicant had, who the corporate shareholders were of the company, if it was an incorporated company.

This was received by the ministry. It then put a notice in the Ontario Gazette saying it had this application, inviting anyone to object if they wished. If an objection was filed, the matter was then immediately sent to our board, because essentially that is what we did: we dealt with objections to determine whether the public interest was being served. Then the ministry would send not the application form it received but a document where this information I have just described to you was whited out. That went on our public record, so neither the board nor anyone who wished to oppose had access to that information.

**Mr Villeneuve:** Was this a ministry decision or freedom of information requirement?

**Mr Smith:** It was a ministry decision based on its interpretation of the freedom of information act, because it believed some of the information was personal, some of it was related to a third party and therefore they had to get the consent of the third party, which of course was not practical. As a result of that, we did not get the information, nor did anyone who wished to participate in it.

**Mr Villeneuve:** So the freedom of information act as it came in in 1988 pre-empted this change in the method of processing applications to your board.

**Mr Smith:** Yes. The reason for changing the method of applications was not done because of freedom of information, but that was a fallout of the change in the procedure. The procedure was changed for a number of reasons. One was the ability to put things on the computer; the ministry had computers to set up the whole network. It was also based on the fact that the ministry, under the new act, had to conduct a fitness test of the applicant, determine whether he had proper insurance and so on. That was what precipitated the change in the administration. What I am



suggesting is that the FOIA precipitated the problem I have described, because they could not give us the information they had in their possession.

**Mr Villeneuve:** Consequently making your job of deciding, to some degree, much more difficult or open to a lot more speculation, is that right?

**Mr Smith:** Yes. We had to deal with it on an ad hoc basis by automatically setting down every matter for a public hearing. Once we got it in our domain, as a public hearing, then we could order information to be produced; this is under our standard powers. But it meant that everyone had to go through this cumbersome process, whereas only a small percentage needed to.

**Mr Villeneuve:** Is it your feeling that because of the freedom of information act certain owners of fleets or individual truck companies may have withheld information that you would normally have had?

**Mr Smith:** No. In many cases, the applicants were as frustrated as we were. I have no information to suggest that they were withholding information. They would submit it to the ministry, and the ministry felt it could not pass it on to us or make it available to anyone who wished to oppose. I have no evidence or knowledge that they were deliberately withholding information.

**Mr Villeneuve:** With reregulation or deregulation, whichever, there are considerably fewer hearings, I gather.

**Mr Smith:** Yes.

**Mr Villeneuve:** And freedom of information at this point is a lot less of a problem for you than it might have been prior to reregulation.

**Mr Smith:** It is certainly less of a problem, because we have fewer hearings and fewer objections. It is also less of a problem because we have the decision of the commissioner, which sets a precedent for our particular facts situation. Mind you, the minute you change the facts situation, you may have to go to the commissioner again. That is why I suggest it is not the practical approach. But certainly I would say that the procedures we finally adopted were as a result of complying with the new legislation on deregulation rather than trying to comply with FOIA.

**Mr Villeneuve:** I know there is great concern about American carriers coming into Ontario and a reciprocal arrangement not being available in certain jurisdictions in the United States. Is the freedom of information act detrimental to our Ontario truckers in obtaining information on what may be going on with competition?

**Mr Smith:** Not that I am aware of. It is not an area they would come to me for, on a general broad scope.

**The Chair:** As there are no further questions, and the next witness does not appear until 3:45, I move that the committee adjourn until 3:45.

**Mr Owens:** Just one item of business before you do that. In consultation with the other two members of the subcommittee, as the minister is not scheduled to appear until 3:45 and we would finish at 4 o'clock, that would only allow us 15 minutes for questions. I would like to

suggest that we give each party 15 minutes for questions. If the minister speaks until 4, that would take us to about 4:45, if that is agreeable to the other two parties.

**Mrs Marland:** It is agreeable, of course, but I had no idea that when the minister was coming it was only for 45 minutes. I am somewhat surprised. I knew the time was scheduled for 3:45, but I was not aware that the committee hearing was scheduled to finish at 4, even at 4:30. It seems we have had a lot more time with—I do not want to say less significant people than the minister, but my goodness.

**Mr Villeneuve:** You did not say it.

**Mrs Marland:** Would you not think we would have at least the same amount of time with a minister as we would with any other individual? That is the way I intended my comments to be taken, Mr Chairman.

**Mr Owens:** I am not in any way, shape or form trying to restrict—

**Mrs Marland:** I know you are not.

**Mr Owens:** I am trying to establish some sort of format so we all have a crack to ask questions.

**Mrs Marland:** Was that the only time he could come? Is that why we are so limited?

**Mr McClelland:** I just want to say for the record that I am in agreement, given the constraints, recognizing the constraints. I also want to say that we are certainly not bound, from our party's point of view, to adjourn at 4 or 4:45 or whenever. It is our position that we are available and prepared to work as late as necessary and put in as much time as is required. We would share the opinion of the third party that ideally we would have at least as much or more time with the minister. If that is not the case, our hands are tied; we will allocate the time equitably, whatever time is available. But for the record, we are not looking at a 4:30 adjournment. My agreement was given the constraint of 45 minutes. If it is an hour, an hour and a half, we are prepared to operate within whatever time frame is available.

**The Chair:** Whatever is the wish of the committee.

**Mr McClelland:** May I suggest by way of procedure that we put it to the minister when he is here and ask how much flexibility he has on the back end of his time? If he is able to stretch it a few more minutes, so be it. If not, I will recognize the limitations and operate within those limitations and, if necessary, come back at a later date.

**Mr Owens:** My intention was not to constrain or funnel time. We do not know at this time how much time the minister has, but I am in agreement that we will go until 7 o'clock tonight if we have to, to get the information required.

**The Chair:** Any further business? Thank you, Mr Smith, for appearing today. The committee is adjourned until 3:45.

The committee recessed at 1434.



1548

## SOLICITOR GENERAL

**The Chair:** Seeing a quorum present, I would like to call this meeting to order. I would like to welcome the Honourable Mike Farnan, the Solicitor General, here this afternoon. Minister, the floor is yours.

**Hon Mr Farnan:** I have to tell you how nice it is to be here. I hope my colleagues will remember how nice I was to ministers when they appeared before parliamentary committees in the past, and of course that will carry over into the present. I look forward—

**Mrs Marland:** Those of us who travelled with you on committee remember the good times.

**Hon Mr Farnan:** That is fine. Mr Chairman, maybe you could clarify for me. What are the terms of reference of what you are looking at from me this afternoon?

**The Chair:** Basically, we are reviewing the Freedom of Information and Protection of Privacy Act, 1987, although it has been indicated that we are broadening that scope and are briefly looking at the municipal act as well and anything that is relevant in that act to the provincial act. Am I correct in that assumption?

**Mrs Marland:** Yes.

**Hon Mr Farnan:** That is fair enough. Let's see where we are at. I am appearing as Solicitor General, I suppose, and in so far as these privacy acts relate to the area of responsibility within the orbit of the Ministry of the Solicitor General.

The legislation has worked well, in so far as policing is concerned, for a period of three years at a provincial level. The Ontario Provincial Police has been subject to the provisions of the freedom of information and privacy legislation for some three years. They have been working with the legislation and, over a period of time, given the fact that they have experience in dealing with the legislation, found a comfort level they were able to work with, and were able to release what appeared to be an amount of information which gave the public the right to know and to a great degree facilitated the media in doing their job.

As we are aware, the legislation with regard to freedom of information and privacy kicked in at the municipal level on 1 January of this year. I think we can say there was some difference of interpretation of the act at that time.

Obviously, this legislation, when it comes to release of information, calls for a case-by-case determination. Essentially, it is a piece of legislation that calls for some balance, and the balance has to be struck: on the one side of the equation the public's right to know, and on the other side of the equation the protection of the privacy of the individual. Obviously, in every case this calls for a judgement call.

As I have said, it is the kind of judgement call the OPP has been making for some three years, bringing to its decisions basic professionalism and good common sense. It is not the sort of situation where one can give a directive which says, "This is the circumstance in which you release this information," because in fact we are talking about an equation where, if you had one piece of information or

change one piece of information, it may result in a different decision. So to a great extent we are reliant upon the judgement that has to be made, but a judgement that is made in a context. The context, as I have put it to you, is, as far as is possible, to enhance the availability of the information so that the public has the right to know, the media have the opportunity to do their job, but the individual's privacy is protected when there are compelling reasons for doing so.

We can say very clearly that the legislation should not be interpreted as a gag order. Where there is an interpretation which suggests that we will not release any information, that very clearly would be an inappropriate interpretation of the legislation. Furthermore, where there is no judgement being used, where it says, "It's open season; every piece of information is clearly open," that is an inappropriate interpretation of the legislation.

I think the previous government, through Management Board of Cabinet, put together the legislation and set out in the legislation the circumstances and the limitations. But the matter has to be determined by police services boards and managers, and this determination has to be done with regard to the guidelines for disclosure of personal information held by the law enforcement agencies.

These were developed, I want to remind the task force, by representatives of the Management Board of Cabinet, the privacy commissioner's office, the Ontario Association of Chiefs of Police—it is rather significant that the Ontario Association of Chiefs of Police was a partner in the development of these guidelines—and the Ministry of the Solicitor General and the Ministry of the Attorney General. I have to re-emphasize very clearly that the legislation properly belongs to the Management Board of Cabinet, and the legislative guidelines that accompany the legislation were developed by this umbrella group.

I think perhaps I will leave it at that, perhaps emphasizing again that the guidelines recommended that there be a strong privacy interest in personal information about a victim and that the guidelines are just that, that they are not determinative of the question of release in any particular case. The general intent of the guidelines is to balance the need to protect privacy of the individual against the public right to gain access to information held by government institutions.

I have made the point that the release of information is possible where there are compelling circumstances affecting the health or safety of an individual, where there are compassionate circumstances, where there is a compelling public interest in the disclosure, where the victim consents to the release, where the information is a matter of public record and where the disclosure does not constitute an unwarranted invasion of privacy.

There are a host of rules set out in the legislation which an institution must respect and invoke in determining whether or not a particular disclosure or category of disclosures represents an unwarranted invasion of privacy, and the decision to disclose in every case must be made by the head of the institution as defined in the legislation or the delegate of the head of that institution. Should there be a dispute over a refusal to disclose, a person requesting the



information, as you are aware, may appeal a refusal to the Information and Privacy Commissioner in accordance with the appeal provisions of the legislation.

I am sure that members would agree that whenever you have a new piece of legislation, there is sometimes a period of acclimatization with that legislation, a period of time in which people have to get used to dealing with the legislation, a period of time when a comfort level is gained. I think our experience with freedom of information and privacy at a provincial level very clearly was such.

I remind the committee again that on a provincial level, as far as policing services were concerned, the OPP had a successful experience with the legislation, had no serious difficulty, and there was quite a comfort level in having a significant level of enhancement in terms of making the availability of the information available to the media and to interested parties. However, during that period of time there were occasions when for good cause, for good reason, a particular piece of information was withheld. I think we will leave it at that.

1600

I should say to the committee, I know you were joking when you were suggesting that we would be here until 8 o'clock. I would not want any of you to have your supper burned before you got home and neither would I like mine. I do have another appointment but I hope that by staying until a quarter to five, we will be able to answer most of the questions.

**The Chair:** Thank you, Minister. The normal rotation again this time would start with the official opposition.

**Mr McClelland:** Minister, thank you for accommodating us this afternoon in being here. You indicated with respect to the Ontario Provincial Police and the implementation in 1987 that a comfort level developed over a period of time. That was early on in your comments. Then you suggested, if I am correct, that there was not as much controversy or difficulty in terms of coming to grips with the implementation with the OPP as has been apparent with some of the municipal forces more recently, indeed in the past month, a few weeks particularly.

I am wondering if there is any reason that you might be able to speculate on why it is that the implementation with respect to the OPP went more smoothly, notwithstanding the fact that the comfort level was developed over a period of time. There seem to have been a few hurdles, significantly more hurdles in terms of implementation at the municipal level with respect to regional police forces and Metro by way of particular example.

**Hon Mr Farnan:** First of all, I want to commend the member for his personal contribution to the debate in terms of the freedom of information and privacy act. I think the member's public comments are the type of comments that help to facilitate resolution of this particular issue and to build towards an implementation that would be satisfactory for all of us.

Let's put it this way: During the first week of January, there was some disagreement in interpretation of the legislation. I think that is a fair assessment, a fair statement to make. There were differences of opinion and certainly

publicly expressed differences of opinion between different police forces as to how they would interpret the legislation. But that was in the first week of the legislation. We cannot be really paranoid if during the first week of the legislation there are these differences of interpretation.

However, I have to be frank with you and say that when I discover a difference of opinion in interpretation of a piece of legislation as it applies to policing services in the province of Ontario, I consider that a problem and I recognize it as a problem. I think publicly I agreed, yes, we have got a problem here and I made a commitment that I would attempt to facilitate a clarification that would hopefully bring a more uniform interpretation to the legislation.

Now, obviously I have to put this in the context that this is legislation drafted by the Management Board of Cabinet, that the guidelines that accompany the legislation are produced by the Management Board of Cabinet, but certainly it has effect on policing. My responsibility is to monitor its implementation within the policing area and if there are wrinkles, if there are discrepancies, to see if my office can facilitate working those out.

We had some dialogue with the leadership in the policing area. I and my officials met with some of the leadership within the policing area. We had an internal review of the guidelines to analyse what it was we could do, but the bottom line has to be that the legislation properly belongs to Management Board of Cabinet. So we went back to Management Board of Cabinet and we worked with that group to produce a summary of the guidelines. I think we can say that that summary is an attempt to present in a simpler form and in more layman's language an overall view of the guidelines.

I will be having my officials send these out. It is already completed at this stage and it has gone back. I should tell you that we went back to all of the people that I mentioned earlier, Management Board of Cabinet, the privacy commissioner's office, the Ontario Association of Chiefs of Police, the Ministry of the Attorney General. We did what we felt we could do from my office in facilitating the process of getting a uniform interpretation and we have put together that communication. It is already completed and I anticipate it will be sent out to the chiefs of police if not this afternoon, tomorrow.

**Mr McClelland:** You indicated at one point, at least you are quoted in the press and we will presume until we hear otherwise that it is reasonably accurate, that you felt that you could iron out the wrinkles by the end of the month. Then you subsequently said: "I want to meet with chiefs and try and work it out. Perhaps a six-month time frame is more appropriate." You revised that position and said, "I'm going to submit a report to Management Board," as you indicate that you have done.

**Hon Mr Farnan:** No, okay, let me—

**Mr McClelland:** Can you let me follow through with this?

**Hon Mr Farnan:** Yes, sure.

**Mr McClelland:** Thanks, Minister. I guess what I am driving at, regardless of the sequence there, regardless of the time frame and how you would seek to approach it, at



some point in time you are saying, if I understand you correctly, that as Solicitor General you are going to take some responsibility in terms of how police forces across the province are going to deal with the application of this piece of legislation.

Bearing in mind that we have had that experience, we have had the lead-up time, over three years with the experience of the OPP, we had three years to go to school on it—indeed you had approximately three months in office—to lead into it, anticipating that there could be problems, I am wondering in terms of time frame now of your going to Management Board with your guidelines, is there some point in time when you feel you can say that, notwithstanding the fact that the guidelines are in the purview of Management Board, “As Solicitor General, I have to accept responsibility for the interpretation and implementation and deal with it in a fairly concrete, definitive manner so that there is consistency across the province”?

**Hon Mr Farnan:** Absolutely, yes, that is our goal. But you have wrapped up quite a piece of information there.

**Mr McClelland:** Unfortunately I would like to have done that about five questions ago.

**Hon Mr Farnan:** Let me also say that in a rather clever way you perhaps suggested that there was some ambiguity in the messages I was sending out. I want to be very clear. How do press reports issues—I cannot be responsible for that. From the very start as Solicitor General, I recognized that yes, there was a problem. I did on one occasion suggest to a reporter—let me put it exactly in the context. When approached by a reporter in the first week—the legislation now is three days old and I am asked, “We’ve got a real problem here”—my reaction was, “Look, the legislation is three days old. You know, that’s not a big deal at this stage.”

If we still had the variety of interpretations six months from now, I would consider we had a real problem on our hands. Now if that is interpreted as you interpreted it, as changing my view, there is nothing I can do about that, but my position has been very consistent. If I recognize a problem in policing, I want that problem resolved as soon as possible, and when I said I would attempt to have an internal review within a month, I have attempted to keep to those time lines.

We may have missed the end of January by a couple of days and I hope people will forgive us for that, but I think we have kept reasonably within the guidelines that I set out that we would respond within. In that month, let me tell you, legislation kicked in on 1 January, so let’s presume there are a few days in which you recognize there is a problem. So within the three-week period, we have had the internal review, we have had consultation with all these partners, we have come together with a package that we are sending out. Over a three-week period, as government works, I would suggest to the member, that is probably a pretty fast response.

1610

Now what is the long-term goal? I want also to make it very clear to this committee that this is not a matter of one

ministry wanting to wash its hands of an issue. All we are simply saying to the committee is, the responsibility for this legislation properly rests with the Management Board of Cabinet. All of us in different ministries, whether it is in Education or whatever, or in municipal government or in policing have a responsibility as to how it impacts on our particular ministry.

My office will continue to work with the policing services division of my ministry. It is not saying: “We are sending out a clarification today. Now our job is finished.” We are sending out this clarification hopefully and saying to our partners in policing, okay, we notice already, and you notice I am sure, that there have been adjustments in the positions that some police service boards and police leadership have taken since 1 January. There were areas where no information was forthcoming, and now the location is being given and the time and some of the circumstances. Already we can see some accommodations being made.

But I would say to you that we are going to continue to work with them. We will monitor the situation in policing. We will have an ongoing dialogue. My police services division will be working with the police services across the province and we will be reporting our experiences back to the Management Board of Cabinet.

If anything, I would say to you that it is not even the Management Board of Cabinet alone that will hold a responsibility for the legislation; it is the government. That is where, as we all know, responsibilities are given out. I have certain responsibilities, but it would be absolutely inappropriate for me to suggest that I am going to change the freedom of information act when it properly belongs to Management Board of Cabinet.

I think what has to happen is that each ministry will see how it applies to its particular ministry, and as we get experienced, we will try to work within our ministry to resolve the problems. At the same time we will constantly feed in that information to Management Board of Cabinet which, through their umbrella group, can also have a hands-on feel for what is happening to the legislation across all the fields of government.

**Mr McClelland:** Minister, time has almost gone. I learned at your feet how to put two questions into one, so I will break it up and you might be able to respond.

You indicated that it is indeed a subjective interpretation and in the final analysis the chiefs of police are going to make decisions across the province. It is difficult to work in a hypothetical and to answer what-ifs, but I am going to exercise that and I know you will respond.

**Hon Mr Farnan:** I think you will waste your time in that exercise.

**Mr McClelland:** But let me put the question and you might respond accordingly, Minister. If the situation exists, I know that you are confident that it will be able to be resolved, but given the fact that there is a possibility that there would be, and I would even go so far as to say a probability that there will be, different applications of interpretations from place to place across the province, would you feel that it would be appropriate at some point



in time for an individual out of your office to accept the responsibility in terms of what kinds of information in setting directives, if you will, recommending amendments to the legislation that would put the responsibility where it perhaps ought to be, having consistency across the province with the senior police official of the province—that would be the individual who occupies your office?

As an adjunct to that, how would you respond to the philosophical position that would be put to us from our friends in the press that perhaps things were working very well when they were given the responsibility and accepted it, quite frankly, very well in terms of their professional conduct in using their discretion and their sensitivity in being given a broad latitude rather than a narrow latitude, to be given significant amounts of information, effectively unrestricted, on the terms of security issues, but given all that information? And they had exercised discretion, I would say, extremely well over the number of years.

It is really two-stage, but they mesh one with another. Would you think that at some point in time, if it comes to that, you would be prepared to say that the Solicitor General, he or she, must ensure consistency across the province and therefore that the decision ought to repose in your office?

**Hon Mr Farnan:** Well, I want to go back to the comments that the former Solicitor General, Mr Offer, made; to the comments that the minister responsible for the Management Board, Murray Elston, made. In recognition of some of the difficulties that were out there initially, both of these former ministers of the previous government, said, “Hey, maybe this legislation can be interpreted a little bit more liberally.”

**Mr McClelland:** Use that word very advisedly.

**Hon Mr Farnan:** Of course, okay. And maybe gag orders are not appropriate, and maybe we need time. I think Mr Elston’s comments were, “You know, we need time with this legislation.” That is why, in my view, as this committee looks at the Freedom of Information and Protection of Privacy Act, it makes good sense to look at what happened at the provincial level and make your determinations on that. It is very difficult, I would suggest to you, to make a determination as to what has happened within one month at the provincial level. Mr Elston claimed that, given time, there would be a more balanced and more uniform approach to legislation.

I respect the media for the job they do. I think that indeed they have demonstrated a responsibility in the manner in which they have released information. But I think we would all agree that indeed there is a situation in which individuals feel that they have a right to the privacy of information and protection under the law in terms of the release of that information.

As a government, I think we are conscious of the fact that it is legislation we inherited. I am not prepared at this stage to suggest whether it is perfect legislation or not. All I am saying is that I am working with the legislation, I am working with police services in order that we get a uniform application of the legislation across the province, and I am keeping my colleagues at the ministry, at Manage-

ment Board of Cabinet, informed and will continue to do so. We are simply one month into the legislation, and I am pleased that my ministry has taken what I believe is a fairly proactive situation. As soon as we recognized that there was a concern, we took responsibility, we had internal review, we had dialogue among partners, including the associations of chiefs of police, we reported back to Management Board of Cabinet—and we have a very tough chairman who has just signalled the time. I am finished.

1620

**Mr McClelland:** I regret that our time limits form a constraint.

**Hon Mr Farnan:** Likewise.

**The Chair:** I allowed a few extra minutes there. If the members posing the questions and the minister could shorten their questions and shorten their answers, we may be able to get in more questions.

**Mrs Marland:** Mr Solicitor General, what I hear you talking about is uniform interpretation, uniform application. You are going to monitor, it is going to be an ongoing dialogue, and it is a judgement call. These are some of the things you have said this afternoon.

**Hon Mr Farnan:** If I could stop you there before you—you premised your questions on that summary. What I have tried to say, and maybe I did not say it, is that what I am attempting to achieve is a greater uniformity in the interpretation and application. There can never be uniformity, as the member will acknowledge, because we are dealing with the issue on a case-by-case basis. There are probably no two circumstances which are exactly the same.

**Mrs Marland:** I understand that.

**Hon Mr Farnan:** Okay.

**Mrs Marland:** And I think I understood, if you would let me finish, what you are saying. You see, what you are not saying, as I hear it, is that you are prepared to bring forward even any guidelines. Am I correct?

**Hon Mr Farnan:** Guidelines have already been brought forward, as you are aware. The guidelines that accompany the act were brought forward, and what I have said was that I reviewed the guidelines, had a consultation with all of the partners who are responsible for the guidelines—

**Mrs Marland:** You are talking about the guidelines that are part of, inherent in the bill.

**Hon Mr Farnan:** Yes.

**Mrs Marland:** Yes, well, what I am talking about are the guidelines that are obviously needed that have now been addressed by the people who have to enact the legislation.

My concern, from what you have said so far this afternoon, and maybe it will change, is that you are saying it is a judgement call. Now, a judgement call by anyone in any circumstance is based on his own window of reference. So your judgement call as chief of X force might be quite different from my judgement call as chief of my force. I really feel, in this day and age, the question is, who is



going to be willing to step forward over that edge if he does not know how deep the water is? And who is going to know the answer to that until somebody challenges in the courts exactly what the interpretation is?

I want to add to that the fact that, as you know, as of yesterday we now have three Court of Appeal judges who unanimously have supported three Supreme Court judges' decision of last August to allow a female citizen in Toronto to sue the police force for the fact that she was not protected. Now, I think it is significant. I just want to read this to you and ask you what you think about it, because I think this is critical in your responsibility of dealing with this problem not six months from now, but now.

In this particular incident: "The rape victim's lawyer"—and I am quoting from the Toronto Star—"argued that her client was used as bait to try to catch Paul Douglas Callow, a criminal known as the 'balcony rapist.' Callow was sentenced three years ago to 20 years in prison for knifepoint sex attacks on five Toronto women from 1985 to 1986."

Now, this is the significant part that I would like you to comment on:

"The victim's name was on a police list of women living in the area of Church and Wellesley streets who were in particular danger of attack, Cornish has said. Yet Jane Doe was not warned about the rapist.

"'Police were aware of the danger she was in and failed to warn her and failed to protect her,' Cornish said. 'There was a duty to protect her and to prevent the crime.'"

I wonder what your reaction is to that, because here we have now six judges who agree on the right of this individual to sue the police. We have a situation—I assume, and I cannot speak for the police, I can only read some of the comments that they have made in here—that is not something that can be challenged under the charter. This is what the police lawyer is saying, and my question to you is, if the privacy of the individual is being protected and the risk is still there—because in this case the privacy and the details of what was going on in that community were being shielded, the community was being shielded from this information by the police, and I assume we can only guess some of the reasons the police made that decision. I am not going to say on the record some of the reasons I think they have made that decision, but where do you see in your role with this legislation, if you are going to allow police forces to make their own interpretations? First of all, do you think that decision is right in that particular case and how would you then interpret their judgement?

**Hon Mr Farnan:** The variety of questions that you have asked—first of all, you suggest that each person sets his own parameters. That is not true. There are guidelines in terms of what those parameters are, and very clearly there are obligations in terms of the release of information in certain circumstances. Those decisions have to be made and, as I said, on a case-by-case situation, and you have to factor in all of the information.

Basically you said yourself you do not know what all the circumstances were in which the decision was made. I would be very reluctant to say to the member that I would

hate to criticize a judgement call if I made the same statement as you and said, "I don't know all the reasons why a decision was made, but I know it was wrong," and I would say to you that in terms of this legislation, based on all the information available, that is what the decision has to be made on. If you add or take away from the information available at the time, you could in fact change the interpretation.

**Mrs Marland:** Okay. Let's move away from that case; let's just say "in general." In your position of Solicitor General as it pertains to this legislation, would you not have a basic guideline that would suggest, where the public is at risk, that the public should be informed of that risk?

**Hon Mr Farnan:** Again, we have to go back to the legislation. We are not dealing with something nebulous. We are dealing with a piece of legislation that was produced by the previous government that basically has a set of guidelines attached to that legislation that has worked well at a provincial level for three years, that had an initial, tentative introduction during the month of January at the municipal level as it applies to policing, and I would say that perhaps it is somewhat premature. I am not going to say that the legislation is perfect, but all I can say to you is that at a provincial level the legislation has worked, and worked well.

**Mrs Marland:** Mike—

**Hon Mr Farnan:** If I may finish, I would suggest to you that one month into the legislation is not the time to make a sound evaluation of the legislation. I think I have said to you that I will monitor it very closely. Within one week of the legislation being in place, I said of the policing services across the province, "I will do a stocktaking. I will do an internal review. I will go back and I will consult with all of the players who produced the legislation. I will attempt to have a clarifying statement within a month." That clarifying statement will be in the public domain either this afternoon or tomorrow.

I think that is a responsible approach to my duties as the Solicitor General, and it will not end with the issuing of that piece of information. It will be ongoing. I can give you my commitment that I will be working with police services, police leadership across the province, and we will continually monitor. I promise to take the concerns that are registered by policing services personnel very seriously.

1630

**Mrs Marland:** What about the concerns of the public?

**Hon Mr Farnan:** Absolutely, but I am here as Solicitor General. The overall legislation has effects on policing, on the public, on victims. It comes across in many, many ministries. There is an umbrella at the head of which is Management Board of Cabinet. In so far as I have a responsibility within the policing area, I will take on that responsibility. But the whole legislation, I would point out to the member, is the responsibility of the government. I want to see how it works. I want to give it a reasonable amount of time so I can make a mature judgement and not



a hasty judgement. I believe that one month after the legislation was introduced would be an immature judgement.

**The Chair:** I would like to remind the minister to keep his answers reasonably brief so we can get some more questions.

**Hon Mr Farnan:** Margaret has an effect on me somehow.

**Mrs Marland:** Mike, you are the top cop in this province, and you cannot hide behind the statement that this legislation was legislation of a former government. It is the legislation of the government of the day.

**Hon Mr Farnan:** Absolutely.

**Mrs Marland:** Okay. And you are talking about a clarifying statement that is coming out. You are talking about listening to police forces. There is not anyone in the Legislature who has more respect for the police forces in this province than do I. I have made statements in this House about that. This is not a criticism of the police forces. This is a criticism of the fact that we have a case—admittedly, it is four years ago—where five women were sexually attacked, raped, within a one-year period.

I am simply asking, in the public interest, if that were the case today, would you sit back and monitor, with an ongoing dialogue, and all these words you are using this afternoon, when it is blatantly clear that if the guidelines that came with the legislation were so good there would not be all this diversity of interpretation that is going on currently?

Also, in this specific case we are using as an example because it happens to be in the press today—but God knows, unfortunately these cases are not a biannual event; we have cases like this all the time where the public is at risk—I am simply saying that in this particular case we now know that information affecting public safety was withheld. That much we know, and that is the reason the police are now going to be sued.

What I am asking you is: Are you going to sit back and monitor something that is as blatantly simple as—giving an example of where the public is at risk, if there is a child molester in a community, do you not think that community is allowed to know that? They do not have to know the details of the victims at all, but I think parents in this province today should be able to know, through the release of information from police forces, if there is a sex offender attacking children, if there is a rapist attacking women, if there is a series of violent crimes being perpetrated on the public in certain communities, surely a basic guideline would be that that kind of information is released to the public.

**Hon Mr Farnan:** And that kind of information would indeed be released to the public. If, for example, you have rape taking place in a particular community—

**Mrs Marland:** But we did not have it under the old legislation.

**Hon Mr Farnan:** I am saying to you that under the present legislation, the actual crime can be reported, the general neighbourhood can be reported, and indeed the

community can be protected with the release of that kind of information.

**Mrs Marland:** If that particular police force—

**Hon Mr Farnan:** Excuse me, let me finish.

**Mrs Marland:** —chooses to.

**The Chair:** Through the Chair, please.

**Hon Mr Farnan:** Mr Chairman, I would appreciate if the member would give me the same courtesy I gave her.

The reality of the matter is that it is possible. Not only is it possible, it would be a reality that using this present legislation, the community would get that information, but they may not get the names of the actual victims. They might, under some circumstances, but certainly within that neighbourhood, within that community, there would be awareness of that particular type of crime having been committed.

The other point I would like to make before I conclude is that I do have a little problem with anybody in the Legislature who presumes to suggest that they love police services more than anybody else. I think we all respect the police and we all respect the job they do and we all want to make their job as valuable as it can be, and that is why we are all going to work with them to ensure that they have the resources in which to do it.

**The Chair:** Time for one quick question.

**Mrs Marland:** Well, I have had 16 minutes and the former speaker had 20.

My comments about policing in this province were my own comments to preface what might otherwise be interpreted as a criticism of the police forces. I am simply asking you, as the top cop in this province, why you would not issue realistic parameters for all the chiefs of police so that every one of their personnel is not going to be at risk of being sued because this legislation has to be interpreted. That is the focus of the problem we are dealing with here—

**Hon Mr Farnan:** In the act itself—

**Mrs Marland:** Excuse me. If we are saying—I am only going by what you have told us this afternoon. You have told us it is a judgement call. Those were your words. I am simply saying, by whom? What protection does my chief of police have when he makes that judgement call and somebody questions it? On the other side of that, if the judgement call is not to release pertinent information in the interest of public safety in this province, are you as the top cop going to step forward and say it is compulsory that that information be released? I am not asking for victims in any of these circumstances. I want to make that clear, although I have already said that.

**Hon Mr Farnan:** Talking about public safety, in the legislation itself, on obligation to disclose, in section 11 it reads: "Despite any other provision of the act, the head shall, as soon as practical, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so." And that "the record reveals a grave environmental health or safety hazard to the public."

**Mrs Marland:** And who interprets those grounds?



**Hon Mr Farnan:** That is in the act itself.

**Mrs Marland:** Mike, who interprets the grounds?

**Hon Mr Farnan:** That is not in the guidelines. That is not a loose case you are looking at. This is a case where you have described what is very clearly what you believe to be at risk.

**Mrs Marland:** Well, one final question, then.

**Hon Mr Farnan:** The act itself would respond to that and say that under those circumstances there is an obligation to disclose. There is no judgement call in that particular case.

**Mrs Marland:** Mr Chairman, my final question to the Solicitor General is: If that is so, why has there been so much concern since that bill was published and proclaimed? You are saying it is in the legislation, it is perfectly clear, it is up to the chief to interpret it. If that is so, why has there been so much concern about this legislation, and why are you not willing to remedy it now rather than wait and monitor it?

**Hon Mr Farnan:** In some cases there is an obligation to disclose, it is not a judgement call; it is very clearly enshrined in the legislation. But there are going to be some cases where there is going to be an element of interpretation. I point out to the member that in those cases where you dealt a judgement call that has been made, there is resource to appeal that judgement call and to have another opportunity to access the information. But in some particular—

**Mrs Marland:** But you should protect your chiefs—

**Hon Mr Farnan:** Excuse me.

**Mrs Marland:** —by not leaving them out on the line.

**Hon Mr Farnan:** In some particular circumstances, I remind the member, the legislation says very clearly that there is an obligation to disclose, and the public being at severe risk in a circumstance such as you describe obviously meets that definition.

1640

**Mr Owens:** Will the statement you are in the process of releasing this afternoon be a directive to police forces about how to apply the legislation? Can you give us a general idea? Perhaps it may clarify some of the confusion we have heard here today.

**Hon Mr Farnan:** No, it will not be a directive. I think we have to state that. It is not a directive. The legislation requires those entrusted with the responsibility of making the decisions with regard to the Freedom of Information and Protection of Privacy Act to find a balance between the public's right to know and the protection of the individual.

Were we to issue a directive which said, "This is it," we would be presuming that each case is exactly the same, and indeed, the reality of the matter is that there is a variety of circumstances and there is a variety of consequences to release of information.

I think we have to accept the fact that we will, as far as possible, work with police services across the province. We have had ongoing training courses, where those who

are involved in the process have had the opportunity to be involved in intensive training courses in the application of the act. Obviously, as we gain more experience there will be a sharing of these experiences, and hopefully we will find a greater uniformity of interpretation. That has to be my goal as Solicitor General.

At the same time, working as part of the government and with the minister responsible for Management Board of Cabinet, we will want to monitor how this act is working, not only in policing but at the municipal level and in other areas. As with other legislation, it has not been uncommon that after 18 months or two years, a government will look at a piece of legislation and say: "There are some legitimate concerns here. There's something we can change that can improve the system." But I have not found too many governments which have said: "This act has been in place 30 days. We'd better change it now."

The reality of the matter is that we are working with the legislation, we are working proactively to make it work, to give the kind of support system to those who are responsible for the legislation to do the very important and vital task being asked of them.

I have great confidence in the policing personnel of this province. I am very confident that the professionalism they bring to their job and the good judgement police officers have—they do not shy away from a tough job. Nobody said policing was an easy job, and it is not an easy job. This demands good judgement and it demands professionalism, but I think we have the kind of police personnel who can address that challenge and I think the legislation may very well work. We know it has worked at the provincial level, and—I repeat—it is premature to presume, 30 days into this legislation, that it is not going to work at the municipal level.

**Mr Owens:** I guess that leads me to question why has there been such an outcry and such a monumental wall of feeling put up against this legislation municipally, when in fact the provincial legislation, to my understanding, passed with barely a whimper or a cry, but on a daily basis, starting 1 January, we were faced in the press with stories of problems and potential suits and things like that. I am wondering why this problem has arisen.

**Hon Mr Farnan:** I would have to feel that there has been an initial sense that perhaps access to information, far from being enhanced, was in fact being reduced. We would be silly to deny the fact that if the initial approach taken by, I would say, a very small number of police forces was to say, "Okay, we're not giving out any information"—there were one or two that took that particular stance—obviously that creates a climate out there. I think the media would have just cause because without some access to information and indeed without reasonable access to information they cannot do their job and in many cases the public would not be receiving information that they have the right to have, as Margaret has pointed out. But that was an initial response. That was a response within the first couple of days. I think you would be hard pressed to find today a police force in Ontario that is saying there will be no information given out under this act.



I think the reason there was such a stress level in those early days was that there was the fear of this blanket interpretation, which as Solicitor General I find inappropriate and would not accept as a reasonable response to the legislation within policing. I am happy to say that policing services, policing leadership, as they grow more accustomed to the legislation are feeling more comfortable. I think we are getting a greater degree of uniformity. But I would also be reluctant to suggest that there is not a great deal more work to be done. We have to continue to share, continue to gain by our experiences and share those experiences across the province and continue to monitor the legislation.

**Mr Owens:** I think that from time to time we have all wrestled with the same kinds of questions that the honourable member has posed with respect to public safety and information. The Victims of Violence association made comments somewhere around the first or second week of the implementation of the legislation that by not releasing victims' names, it becomes a faceless crime and there is no personal identification or level of empathy with the victim of that crime. I guess that with respect to any kind of instructions that you have passed on to Management Board on the release of victims' names for other than crimes involving sexual assault or crimes involving children, I am wondering what type of philosophy you as the top cop have embraced with respect to that kind of release of information in your directions.

**Hon Mr Farnan:** Let me say to you that I had a conversation with John Bates of People to Reduce Impaired Driving Everywhere just the other day. John Bates is president of PRIDE, an extremely dedicated man involved with the victims of accidents, etc. For example, he felt that there should be some protection for victims. That was his position. He informed me that he approached the media in terms of his views, and that there was very little reflection of his views in terms of that there should be some protection of victims.

1650

I would suggest that here is a man whose entire life is dedicated to working with victims and he is saying to us that in some circumstances there is a right to privacy for victims. There is no doubt that there are occasions when for particular circumstances the decision might be made—with all of the information, all of the background, all of the factors—where a victim's name may be released. But there will be circumstances under this legislation where the victim's name will in fact not be released.

I suppose only time will tell. We are in the early stages of the application of this legislation. I think we are making progress. I, as Solicitor General, am committed to working with policing services and the leadership in policing, and indeed the government with the opposition. I started off this meeting by saying how pleased I was with the kinds of positive, constructive comments that were made by the previous Solicitor General, Mr Offer, and by the previous Chairman of Management Board of Cabinet, Murray Elston.

That is the kind of positive input, constructive input, coming from opposition members that can help to bring about a positive resolution and to make the legislation workable in so far as it can be workable. Attacking legislation simply because you are attacking legislation, in my view, is not a constructive approach. If there are problems with the legislation that are going to emerge, I think this government is mature enough to say, yes, there is a problem with this legislation. After a reasonable period of time, we can make a mature judgement on it and implement an amendment that may improve the legislation, but one month into the legislation, let's be real, let's give it a chance, let's work with it to make it as workable as possible.

**Mrs Marland:** The bill is three years old.

**Mr Fletcher:** On a point of order, Mr Chairman: There are questions going back and forth and I know that this side has the floor.

**Mrs Marland:** No, it was just a comment that the legislation is three years old.

**The Chair:** It was just a comment, Mr Fletcher.

**Mr Owens:** With respect to the consultation that is ongoing now, you mentioned the chiefs of police. Who else or what other groups are you consulting with, as it tends to be that at two o'clock on a Saturday morning it is not necessarily the chief of police who is sitting at the desk when the Toronto Star calls for details of occurrences? Are you consulting with the average foot-patrol person? You are obviously talking to PRIDE, but Victims of Violence, rape crisis centres and things like that with respect to this legislation, for clarification of—

**Hon Mr Farnan:** It is a very high priority in terms of the Ministry of the Solicitor General. Again, I have to commend the previous government. It set up a very good consultative process with all of the partners in policing, not only policing services themselves but communities that are being policed, including victims.

I would like to say that it was my initiative that created this great consultative process that is in place, but I commend the previous government. They set up that kind of consultative process which is in place and which brings our ministry into partnership with all of these people. We are simply continuing the good work that the previous government did in this area, and we will continue to do that.

**Mr Owens:** Which party did you say you were from?

Just one last question: Do you have any idea of a time line in mind for guidelines or potential amendments, or are you just taking a wait-and-see-what-happens approach?

**Hon Mr Farnan:** I would hardly say you could characterize our approach by wait and see what happens. Within one week of the legislation being in place we were talking to policing services and policing leadership and saying, yes, we recognize there are some concerns. We had an internal review. We discussed with the umbrella group that was responsible for the guidelines. We have attempted to make a communication, which is going out today or



tomorrow. We want to work very diligently with our policing services on an ongoing basis.

It is not a matter of we are going to drop people out there into the whole domain of freedom of information and forget them. Training is a vitally important part of this process. We had training prior to the implementation of the act at a municipal level. We will continue to have ongoing training. I think what is even more significant is that part of that training will be a cross-fertilization across the experiences that policing services have right across the province. They will be sharing that with each other.

There is nothing that works as well as working with the legislation, getting the experience, getting a comfort level and sharing that with your colleagues in other parts of the province. Maybe there is room for a little optimism. Let's not be too down on ourselves.

**The Chair:** Are there any further questions? Thank you, Minister, for appearing in front of the committee. As we move to the review of this legislation over the course of this year, we may have a number of questions to ask you again and may ask you to appear back in front of the committee.

**Mrs Marland:** Could I just request that the committee members receive a copy of the release from the Solicitor General today, please?

**Hon Mr Farnan:** I will have that sent over to you, definitely.

**The Chair:** Just before we adjourn, I would like to remind members of the committee that we are meeting in closed session at 10:30 tomorrow morning with the Speaker and the Sergeant at Arms to discuss security.

The committee adjourned at 1657.



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## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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 White, Drummond (Durham Centre NDP) for Mr Frankford

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Coppen, Shirley (Niagara South NDP)  
 Fletcher, Derek (Guelph NDP)  
 Sterling, Norman W. (Carleton PC)

**Clerk:** Arnott, Douglas

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M-3 1991

M-3 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Wednesday 6 February 1991



## Journal des débats (Hansard)

Le mercredi 6 février 1991

## Standing committee on the Legislative Assembly

Freedom of Information and  
Protection of Privacy Act, 1987

## Comité permanent de l'Assemblée législative

Loi de 1987 sur l'accès  
à l'information et la protection  
de la vie privée

Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
Greffier : Douglas Arnott

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron

Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 6 February 1991

The committee met at 1400 in room 151.

### FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

### ENVIRONMENTAL ASSESSMENT BOARD

**The Chair:** I would like to call the meeting to order. I see a quorum present. I would like to welcome to the hearings Gail Morrison, the executive co-ordinator of Ontario Hydro, demand and supply. Welcome. You are the only witness this afternoon so you have as long as you want to take to make your presentation.

**Ms Morrison:** Thank you very much. I actually will not take very much of your time. I have a few brief words I would like to say, and I trust that you have all received the submission which I sent in ahead of time.

The board has asked me to come before the committee today to talk to you about a very narrow point concerning the freedom of information and protection of privacy legislation. I do not intend to address the general questions, but this particular point is of some importance to the operation of a board such as the Environmental Assessment Board and it asked that I make representations to you on its behalf.

The board, as you may be aware, is made up of a number of panels which hear different aspects of environmental assessments. The one that I am associated with is the one that is reviewing Ontario Hydro's 25-year plan. This is one of the most complex and difficult assessments that the board has ever undertaken. I think it is fair to say that it is one of the most complex and difficult hearings that has been set up in the province in some time.

We have, as you will note from my submission, some 150 full-time parties, many of them represented by lawyers and many of them funded through the Intervenor Funding Project Act by Ontario Hydro so that they can make appropriate submissions about the environmental assessment of Ontario Hydro's proposed 25-year plan. The funding amounts to more than \$20 million, so when you pay for that much lawyers' time, you can imagine you get quite a lot of chat.

We are just beginning our process now. In beginning that process, the panel members are quite aware of some of the limitations on their activities, and one of them which concerned them was possible difficulties under the Freedom of Information and Protection of Privacy Act. It is very much in the interests of a board such as the Environmental Assessment Board and a panel such as this one to be open and available to the public being heard before it. No one at the board would like a decision to be made which does not invite the widest participation of the public and which does not give it as open as possible access to the information

upon which the decision is to be made. But in a situation such as the one in which I am involved with the Ontario Hydro demand-supply plan, there are a number of constraints which the panel is operating under. They have a very, very difficult set of information to look at. It technically touches a very wide range of subject matter. There are things from economic forecasting to the health effects of various technologies, the technology of energy production itself, the pricing, the responses of the public to pricing, demand management and environmental effects large and small.

The panel is a three-member panel and it is a panel that is not a panel of experts in the usual sense. The chairman of the panel is a Supreme Court judge. Two other members of the panel have backgrounds in environmental and scientific areas, but they are not experts on power production or experts on the kinds of subject matter which will be the main part of the hearing. They are therefore trying very hard to provide themselves with sufficient information to make a reasoned and rational decision which would not be criticized by any of the parties to the hearing. In arriving at an informed decision they must somehow absorb this enormous technical information and share it with one another and utilize the staff which is provided to them: myself, counsel, computer experts and some technical experts who will try to help them understand the information to form their decision.

It is not at all the intention of their view about this particular section of the Freedom of Information and Protection of Privacy Act that they wish to keep information from the public, but they do wish to be able to make a decision in an efficient and effective way. In a matter such as this, if a decision cannot be made in a reasonable time frame, the decision itself will be useless. Matters change so quickly in the field of energy pricing, in the technology, in the understanding of environmental effects, that if the panel cannot hear the information and make a decision in a reasonable time frame, the decision itself will be out-moded.

The main concern they have is the possibility that their process might be affected by the ability of not only parties but members of the public, and anyone in fact, to ask under the Freedom of Information and Protection of Privacy Act to see all of the kinds of informal notes and informal documentation which will form part of their everyday work in trying to assess the plan. They are not, I think, concerned that there is something secret upon which they are going to make their decision. Rather, they are concerned that they will have to, as a three-member panel, communicate a number of different ways with one another, through written communications, through draft decisions, and they will all, of course, be making notes as they hear the evidence. I think we can all understand that it would be



impossible in such a difficult technical area to make a decision without making very copious and careful notes as the various parties present their views.

1410

If, as it appears from the Freedom of Information and Protection of Privacy Act as it has been interpreted to date, all of these documents are open to disclosure under the act, then it has a chilling effect on the decision-makers, and on their staff indeed, in attempting to reduce to writing any of the information that is short of a final decision in the matter.

It is therefore the purpose of the small written presentation which I forwarded to this committee to point out the difficulties that the panel sees with this particular type of disclosure and to ask the committee in its deliberations to consider changing the section in such a way that draft opinions, notes taken by tribunal members and other pre-decision deliberative types of communication would be exempt from disclosure under the act.

Again, it is the board's view that there are a number of mechanisms in the hearing process which provide information to ensure that the parties have a good knowledge of one another's cases and a good knowledge of the reasons that the panel uses to eventually come to a decision. There are verbatim transcripts which are taken at all of the hearings which are made available by the board to all the parties. Those transcripts are made available both as hard copy and through a computer search facility to enable people to find any particular portion of the transcript which might interest them. Full reasons for a decision are given on motions and on any important decision that the panel makes. Those reasons for a decision are mailed out to the parties as soon as possible after the decision is made to ensure that everyone is fully informed about the decision-making process. All of these particular mechanisms for the sharing of information do, in the board's view, provide parties with the protection of their right to know the information upon which a decision is based.

In addition, the board's processes are very analogous to those of a court. In fact, parties have very extensive legal rights to challenge the panel's or the board's decisions, and the processes in the hearing itself follow court processes very carefully so that the rights of the parties in the hearing process are protected. In the original aims of the freedom of information and protection of privacy legislation there was a concern that there might be decisions made by administrative tribunals which depended upon backroom information. The legislation was never extended to court processes and it is the board's view that its processes are, in the hearing of matters such as the environmental assessment of the Ontario Hydro plan, very like court processes and therefore subject to the same protections which exist in that process. They therefore feel, in the particular of the disclosure of notes, draft decisions and other communications among the panel and of the panel with the staff, that a specific exemption should be made from the disclosure of this information.

I think that summarizes the board's view of the matter. As I say, it is not their intention to make a general submission but only to address this specific point.

**The Chair:** Thank you very much. Normal rotation today would begin with the third party. Since we have some time this afternoon, there is lots of time to ask questions.

**Mrs Marland:** I must say that it is really encouraging to have you here this afternoon and listen to your frankness and your openness, because it is a very critical area that you are addressing. It is ironic in a way, because I have thought that if there was any board that I would like to be appointed to some time in the future after I retire from politics—

**Mr Owens:** Wrong committee, Margaret.

**Mrs Marland:** I may be quite elderly by then and I am not planning to retire for at least another 10 years, but the Environmental Assessment Board is—I know we have many, many important panels—in my estimation, one of the most important hearing panels that we have in the province today.

Some of the aspects that you have brought to us about just how difficult and how challenging that very real responsibility is, to hear you describe the difficulty and be so honest about it—in fact, I often say to people who bring worlds of problems and challenges to us as members that I never pretend to be an expert on anything that I do not know anything about. In fact, I personally find it quite a learning experience to ask a whole lot of questions all the time and that is how you acquire the knowledge, step by step, to deal a little more effectively with problems in arenas that you really have no previous experience in.

I can quite well see how terribly difficult it must be at times on a board like the Environmental Assessment Board where you have nothing but expert witnesses, consultants and, as you say, very effective counsel, and the counsel are calling their effective consultants as witnesses with a lot of technical and professional information. It is quite true that as you sit there as a panel member being very honest on behalf of the people of Ontario that you are not an expert in all of these different subject areas that are being brought before you as evidence. However, I think that is why we have confidence in the process.

I wanted to say that up front because I am confident in the Environmental Assessment Board hearing process and I am confident because I think sometimes people who are not immersed in one aspect of information then perhaps can hear all aspects much more openly and clearly. If you are sitting there as a panel member with a technocrat on the engineering aspect of this particular report of Hydro's and then you have someone who is perhaps a physician or someone in the medical field who is dealing with the health issues and perhaps an actuary who is dealing with the economic forecasts, I think as panel members you can sit there and listen to all of it very objectively because you are not claiming to come from any particular specific field yourselves.

Now, when you describe how copious your notes have to be while you are listening and how important those notes are to you, I am fully sympathetic with that. Those kinds of notes, which are essentially notes to yourself—there is no way, as far as I am concerned, that they are part



of an official public record, which is really what you are trying to say to us, is it not?

1420

**Ms Morrison:** I think so. One of the things to bear in mind is that in a number of other tribunals you would have a single member sitting, which is often not the case with the environmental assessment tribunals because of the wide range of expertise you need and because of the difficulty of the questions being addressed. If the person is sitting alone, he or she is not likely to be subject to the same necessity for disclosure because he will not necessarily have to write down and share information with anyone else to come to a final decision. With a three-member panel, as you can imagine, it is a case often of writing by committee. One member will say: "I think this is a good beginning. What do you think of it?" and the other member may say: "Well, I don't share that particular wording. I would sooner it said it this way around." I think there is a danger, if that kind of information is to be available under a disclosure statute, that either the members will be hesitant to share their information in writing or that there will be some misunderstanding that will be generated by people having that information, some misunderstanding about the thinking processes which were going on. I think that is the chief concern of the board in this matter.

**Mrs Marland:** I am completely sympathetic to that, because being a responsible board member would mean that at the end of the hearing process, yes, you would have come to some conclusions yourself, and you will have your notes—to which you would refer, when you think of how many months some of those hearings go on. But being a responsible board member, though you have reached these conclusions, the most effective you can be to represent the overall interests of the people of the province, which is what you are doing, is that you are willing to listen to the other board members. Human beings being what we are, we can all pick up different things from the same hearing and the same people giving the same evidence; you might look at it and interpret it in a way I had not. The important thing is that we can both refer to our notes and talk about it.

How on earth that could ever be construed as information that should be made available to the public when, at that point, they are still only my personal notes or your personal notes as a board member—are you saying you have had requests already? Is there precedent for your concern?

**Ms Morrison:** There have been requests at other tribunals. We have not yet, at the panel I have been associated with, had a request for this kind of information, partly because we have had only a few preliminary hearings at the moment so there is very little of that kind of information available. There has been some question about information from staff reports and the expert assistance the panel will have. The panel is intending to resolve those problems by making all reports it receives on any evidentiary matter a part of the record of the hearing, so those will all be set on the record and the parties can review those.

To the extent that they are receiving expert opinion on anything, they feel obliged under the usual legal principles to make those available to the parties. The only parts of their deliberative process they are concerned about in disclosure are the kinds of notes and questions they might ask staff, which are just for clarification and are not really part of the end product of the decision-making. For example, if you look at the documents that are available for the Ontario Hydro plan, they fill this table, and a number of them use technical terms which are not familiar to just anyone. I think panel members might say, "Could you please provide me with a list of books or documents which would give definitions of the following terms?" They may not want the public to then take that document into the tribunal and say something like, "Here's a person listening to this particular technical evidence who did not know at the beginning of this what the term 'volt' meant." There is a kind of misunderstanding which could arise from the simplest question about what the intention of the question was or, indeed, about the expertise of the tribunal members. They do not pretend to be experts in this matter and they are educating themselves as fast as they can, but they need to have the freedom to educate themselves in an efficient way, if you like, and not one in which they would have to ask those questions in an open forum, so to speak.

**Mrs Marland:** Some people would say the alternative is then that when you have an Environmental Assessment Board hearing on, for example, the Ontario Hydro demand/supply report, you must have a panel totally made up of electrical engineers and economists or whatever. If you are really representing the overall interests of the public, then it gets back to the point I made a few moments ago that I do not want the specialists in all of those particular areas on that panel because they will only look at it from that perspective. You will get an electrical engineer who may only look at it in terms of, "Well, we've got to supply electricity to the people in Ontario and this is the only way to do it." Because it is the Environmental Assessment Board, I want my panel members to be looking at that from the overall impact on the environment; that is what the Environmental Assessment Board is about.

So if there is a way, when we write our report, that we can address your concern in a generality dealing with boards and panel members and their own personal notes, and have some exclusions in what is defined as part of the public record, I understand very clearly what you have brought to the committee today and I am fully supportive and sympathetic to that request.

Goodness knows what they would ever get from our desks in the House if they went around and required all our notes. We are panel members of a sort, the same as you are. There are some committee hearings where I take copious notes. There are some sessions in the House where I am making notes to myself all the time. In a way, yes, they are part of the end, but they are mine. It is almost like opening up your brain and putting it out on the table for everybody else to review, and that is just absurd.

**Mr Sterling:** I heard your presentation and I have read your presentation as well. Part of the differentiation



between the courts and your board and the other 96 quasi-judicial boards we have in the province—I think part of the reasoning for the legislation excluding courts and not quasi-judicial bodies is that within the court structure there are rules of evidence, there are rules of disclosure which provide that litigants or people who are party to the proceedings have rights to certain kinds of access to information. I think the framers of the Freedom of Information and Protection of Privacy Act had the idea that there is not the same kind of structure in the quasi-judicial process. You may want to comment on that.

From the previous comments we have had, and it is my view, the freedom of information act has done more to shield information than it has to produce information. If you accept that premise, then you are here today to ask us to further shield more information from the public, as a general statement. It not only affects your board, but it affects—I believe there are 96 quasi-judicial boards in Ontario. Maybe you could enlighten us as to why your board would be different from the other 95.

1430

The third thing I would be interested in—I think this is a fairly major consideration—I am not necessarily against what the submitter is asking the committee to do, recommending some kind of accommodation, but I do know that the Ontario Labour Relations Board, for instance, came forward to the Chairman of Management Board since the freedom of information act was created and asked the very same question. Therefore, quasi-judicial bodies are concerned about the attack of information which is in behind a decision these boards make. I would be interested in knowing whether particularly the Attorney General—not himself so much as his department—has some kind of comment on it. I think there are spinout issues we may or may not be considering.

I was not the drafter of the existing legislation, but I was involved in a previous draft, as you may know. I think the problem the drafter of freedom of information legislation always faces is that many of the same arguments that were presented here were presented by bureaucrats and were presented by the civil service about protection of information they had; in other words, if they were going to exchange information with each other, then there would be a reluctance to write anything down. The argument went on and on. The people who were involved with the archives made the same kind of pitch.

As I say, I am not necessarily against this, but I certainly would like some of the issues I raise, principally that I do not think we could make the rule for one board and not make it for 95 others—I do not know how that spins out with regard to the other 95.

**The Chair:** Is that a request, that we can get that information?

**Mr Sterling:** I really think that if the committee is going to consider this seriously, then we probably should get the other side of the story, if there is one. I think it is a serious question that maybe you want to make a recommendation on. My tendency at this stage would be to consider that as a serious request and maybe grant either a part

of it—but I am not certain how it affects all of those other quasi-judicial bodies that are not here today. And I would like to hear the story of the advocates on the other side as well. I guess I am giving that as bit of advice to the committee. If it is going to proceed with taking this kind of issue to bay and make a recommendation to change the legislation, I do not know if there is another side to the story or not.

**The Chair:** I will direct the clerk to see if we can obtain that information.

**Mr Sterling:** I think the Attorney General might be interested in making some comment on it. Maybe you would like to talk about the other 95—

**Ms Morrison:** The board has approached this from its own point of view, but there are other tribunals that would certainly have the same concerns. It is probably of greatest concern to those kinds of boards or tribunals that are dealing with very technical information or very long hearings. In a day-long hearing, where you are really assessing the credibility of a witness, you are perhaps unlikely to have the same sets of notes and the same necessity to keep track of what is happening as you do in—the hearing we are presently tackling looks like it may take us as long as 18 months or two years. By the end of the first year, let alone the 18-month period, whatever has gone on in the very first day is difficult for you to recall unless you have careful notes.

It is not the board's view that it is the only board that should have this particular exemption, if you like. I think they understand the view that it should be a very narrow exemption. It is not intended to keep people from knowing the information upon which a decision is made. In fact, there is an exemption in the present legislation that does allow a head to refuse to disclose advice or recommendations of a public servant. The public service concerns about being able to write their advice to other members of the public service was recognized in the legislation. I think it does meet a certain need in the public service.

Here, with the tribunal members, there is not the same freedom. To the extent that we have been able to determine by looking at past decisions, under the present legislation the tendency has been not to give that kind of exemption to the notes of tribunal members and to the kinds of communications between tribunal members or, indeed, between staff and tribunal members. So there does appear to be a need to give an analogous kind of exemption to members of a tribunal.

You mentioned that the quasi-judicial process is different from the court process. Indeed it is. I think we try very hard in the Environmental Assessment Board to make the process a little more approachable for the public; that is, we try not to make it overly legalistic. We try to make sure that people who cannot afford representation feel comfortable in front of the panel and feel as if it is not too legal a process for them to be involved in.

At the same time, all of the panoply of legal rights which are available to people in a court process are also to a large extent available to people before quasi-judicial tribunals through the administrative law process. The process



of judicial review will often review a tribunal's decision on the basis that it has not appropriately provided disclosure or that it has not followed rules of evidence which are the tested rules of evidence of the legal process. To the extent that that review by the judicial process is available on procedural grounds—in fact, those are really the limited grounds upon which the courts can review the decisions of tribunals such as this—the parties' rights to procedural protections are very much protected through that process. Their right to disclosure of other parties' documents, their right to be able to call evidence, their right to control of the process is to some extent supervised by the judicial review procedures.

It is true, I think, to say that boards are quite different from courts in some ways—in good ways, we hope, ways in which they make it easier for the public to take part in an important public process. But in ways in which the rights of the public are protected to legal procedures, I think there are many likenesses between the quasi-judicial process and the court process.

**Mr Sterling:** The basic difference, though, between a court hearing and a quasi-judicial hearing is that your decisions are based not only on the written law but they are also based on policy, which the government of the day has indicated in various and different ways. Part of the concern of the Williams Commission on Freedom of Information and Individual Privacy was that the people who were in front of the board would not understand what the policy might or might not be. Was it in a letter that a minister wrote from himself to some mayor, or was it a policy statement he said in the Legislature some time? Was it part of a speech he made someplace? Was it any other kind of statement?

That had always been the concern, I guess, of the Williams commission, separating what your board and those other 95 boards do from the court system. The court system goes on the basis of law; therefore, the people who are in front of it know the game they are playing. Often, in front of the Ontario Municipal Board or your board, the litigants would say, "We don't understand what the rules are." That is why I think there might have been a decision to give greater access to your records than to those of the court.

1440

**Ms Morrison:** Certainly. To clarify, the board is not arguing that documents upon which it bases its decision should not be fully disclosed either through the process or be open to a freedom of information request. I think the very narrow area of information that is of concern to the board is that area of communication such as the books that the panel member uses, actually making notes during the hearing.

I think it is the board's view that the exemption could be worded very narrowly if necessary, to ensure that it does not take into account policy documents or the kinds of things which were the concern of Williams—and the rightful concern, I think—that there was some kind of secret information upon which discretionary decisions were being made.

It is no one's interest who is a panel member to make a decision which does not satisfy the participants to the extent that they feel they understand the basis for the decision. Tribunal members have no interest in making a decision which would be attacked by participants on the basis that it was based on information they had not been apprised of. They go to great length in these processes to set up paper systems, computer systems, libraries and so on to make sure that background documents and policy position papers are all available to the public at all times. Certainly it is not the intent of this submission to suggest that those matters should not be open to public disclosure.

**Mr Sterling:** Perhaps you could give us some kind of written submission as to what kind of an exemption you are seeking. That might help the committee if it should want to make that change.

**Ms Morrison:** Okay.

**Mr Fletcher:** I just have one question and one comment. These notes that are written down, is there anything that may be written that really should not go to the public, that is going to endanger the public, or are these just their copious notes?

**Ms Morrison:** I think that is a difficult question. As I think was pointed out, if you were making notes in the House, you might be very busy listening to what was said. I know when I make notes, for example, I use kind of a shorthand. I might miss out words which afterwards I can say: "Oh, I really meant 'not' something; I just missed out the word. I know what I thought but I did not write it down that way." I think they could be easily open to misinterpretation.

The other kind of information that I think it is probably difficult to imagine would assist the parties, and might really in fact be dangerous if disclosed, is the drafts of decisions where you have three people who are putting down their impressions and trying to marry them into a final decision of a three-member panel. It is not that there is going to be wrong information there. There are two things that happen. When you are writing a decision, you often do not realize until you try writing it out that you are not logically connecting all of the steps, and therefore it is when you write your draft that you sometimes change your mind about what the end result even of the decision would be, or at least you might change your mind about the steps that you take in explaining it.

A draft decision might not look at all like a final decision and parties who have disclosure of that draft decision may have some reason to think that there was some, I suppose, insidious influence or something which changed the decision from its first form to its second form, when in fact all it was, say, was a discussion among tribunal members or a kind of thinking-out process which happens when you write a draft decision.

I think it is things like that where no one is trying to particularly hide any dangerous information so much as one is a bit more sensitive about making notes about something if one knows they are going to be passed along to one's neighbour for review. Even one's spelling has to be a little bit more careful if it is going to be for public consumption.



I think the main thrust of the board's view is that nothing is going to be served by disclosing those. If somehow the disclosure of those would give people information which would make the decision fairer, then obviously it should be disclosed. The information that makes people understand the basis for a decision, the information that makes people be able to respond to the other party's point of view in an effective way ought to be disclosed. I think there is no doubt about that.

But whether the notes a panel member makes while listening to those particular points of view would contribute to the party's ability to argue his or her position and obtain a fair decision I think is a question of utility. If there is no utility to them, and they also may have a chilling effect on deliberations, then I think a narrow exemption which encouraged people to be thorough in their note-taking would be an effective part of good decision-making.

**Mr Fletcher:** Poor spelling and sloppy writing are not really an excuse to not make them public though. You did not really answer what I was asking. Maybe you did, because maybe the answer is no, releasing that information will not endanger the public in any way, shape or form.

**Ms Morrison:** I guess "endangering the public" is a difficult term, but I think what I see as a danger, or what the board perhaps is most concerned about, is that the integrity of the decision-making process may be brought somehow into question by the disclosure of the preliminary thinking of the panel members or the preliminary jottings as they were hearing the evidence.

As I said, it is quite possible when you are jotting something down to put it in a way which would not be the ultimate way in which you would characterize the information. You might, for example, write down some point and put a short note after it which says "no." That "no" may be some kind of thing which jogs your memory as to the way you were evaluating that information. But read by a third party, it might be misinterpreted entirely and bring into question the kind of diligence of the board member or indeed the kind of logic that was brought to bear on the information that is being noted. I think it is possible that it is open to misinterpretation and therefore dangerous to the integrity of the decision-making process.

**Mr Fletcher:** The information that would be written down would only be made public if someone requested it.

**Ms Morrison:** That is right. It is not on the public record.

**Mr Fletcher:** Right. So if someone requested it, then it would probably be someone who knew what he was looking for. I cannot understand why it is so secretive a process.

**Mr Sterling:** It might be someone appealing a decision.

**Ms Morrison:** It might be someone appealing the decision. I think it is a matter of whether its utility to the parties in obtaining a fair hearing outweighs its value as an aide-mémoire, if you like, to the people making the decision. It is difficult for us to see at this point in the process—with the Hydro plan, for example—how the whole matter can proceed if people are nervous about making quite detailed and careful notes about the evidence that

they hear on the basis that these could be somehow disclosed to the parties and used as the basis of perhaps an appeal or even publicity.

Of the many parties who are involved in this particular hearing, many of them are, I think it is fair to say, professional publicists to the extent that their causes are public causes and it is necessary for them to make public their views on a wide range of issues in order to raise money from the public to put forward their viewpoints. It is possible that information such as this could be misinterpreted and used in a way which would, I think, bring the decision-making process into unnecessary disrepute.

**Mr Fletcher:** I do not share that opinion.

1450

**Mr Mills:** I just want to thank you for being here this afternoon. I am really sort of just filling in here for another person, but nevertheless I have a great interest in what you are talking about. I can understand your perception of the problems with notes. I share Margaret's view; if anybody looked at my notes that I wrote when I am sitting in the House, I dread to think of what the outcome would be.

I would just like to take up on this particular part that you have on page 3. It says, "A decision-maker, faced with the possibility of having to disclose anything s/he notes during the hearing, may choose to note nothing." I can understand that. I spent the better part of my adult life as a policeman, and I can tell you from my experience in courts that the notes taken at crime scenes have caused so much embarrassment over the years to so many people in law enforcement that they have almost come to the point of being somewhat paranoid in sanitizing what they say, because of the fear that at a hearing or a trial the judge or the lawyer may demand to see those notes.

People then tend to really be careful of what they say because of that confrontation process. I would think that if that process is extended to the hearings on Ontario Hydro, that takes away from the intent of what a hearing is supposed to be. I would like to support you in that those notes should not be subject to disclosure, because you are going to have such a narrow choice of words and notes that it would take away entirely from the process when you come to discuss and make some final decisions.

Personally I think that would not be in keeping with what the board is really trying to do. So I have a lot of empathy for what you are trying to say and a lot of support, because we do not want hearings, in my opinion, to become sanitized by fear of what you may have written that really was not meant to be interpreted the way you wrote it. Once again, thank you for being here. I really enjoyed listening to you.

**Ms S. Murdock:** I just have a clarification. When you are asking for exemption of all personal note taking, is that including memoranda to—say you wrote a letter asking for specific information to either a member of your committee or to legal counsel for your committee or whatever. Would that include that? Is that what you are asking the exemption to include?

**Ms Morrison:** No. the exemption, I think, could be quite narrowly framed so that it really prevented disclosure



of the personal notes of tribunal members. The kind of documentation you are talking to is mainly open to legal disclosure under the rules in any case. For example, when the tribunal asks its counsel for a legal opinion on something, it must disclose to the parties that it has asked for a legal opinion. It must disclose the legal opinion to the parties if it is going to rely on that opinion for the basis of any of its decision-making. So there are a number of protections already in place through the legal process to ensure that those kinds of documents are public.

**Ms S. Murdock:** Okay. I guess I did not word it correctly, because I was not thinking so much of the legal counsel, although I know I said that, but I am thinking of just writing a letter or having your secretary write a note to a member of the panel asking for information. Are you including that or are you including just the kinds of notes I am taking today?

**Ms Morrison:** The kinds of notes you are taking today are the main consideration, I think. There are other notes which would also cause some concern, and those would be notes as between panel members either during the sittings or: "Could we meet tomorrow to discuss that part of the evidence on such-and-such? I was not clear what was being said by X."

That is not a dangerous piece of information in the abstract, but a little later on when you are appealing a decision and the decision has been given by one member of the committee representing the rest and that member turns out to be the one who said, "I did not understand that person's evidence," then there might be some question later on whether you could bring that forward as part of your argument that this decision was not appropriately made.

I guess it is very difficult to not seem paranoid in making this particular pitch and not seem to be trying to hide things from the public, which is not at all the board's aim. It is, I think, the board's view that it is only trying to ensure that the decision-making process works as well as possible and not trying to be too sensitive about its spelling, for example.

**Ms S. Murdock:** Just one other comment, actually along the lines of Mr Sterling's: One of my questions was, I got the impression from your opening remarks that you wanted this to apply specifically to the Hydro environmental assessment. But any legislation that would be made could not specifically deal with just that. They would have to deal with all environmental assessment review boards.

**Ms Morrison:** It would certainly have to deal at least with the Environmental Assessment Board and probably you might—

**Ms S. Murdock:** And other tribunals.

**Ms Morrison:** Other tribunals as well. I think it would be fair to say that there are many tribunals with the same concerns. I did not intend to suggest that this was that specific but only that I was using that as a kind of vehicle for explaining how important the board felt this particular matter to be.

**Mr McClelland:** Thank you for your presentation today. Let me say at the outset that I for one—and I am not

speaking for my party but just simply personally—really endorse the general principles of the Environmental Assessment Board as presented by you, Ms Morrison, and the suggestions that are contained in your submission. I agree, and I want to hasten to add that I agree with Mr Sterling's comment and caveat that we need to solicit further information and really canvass the idea carefully and ferret out, if you will, the implications and, to use his terminology, the spinoffs that could come from an amendment such as you have proposed.

I did not understand your submission to confine itself strictly to the Environmental Assessment Board, and indeed the recommended amendment that was put forward earlier did not confine itself to that. It was general in principle. I think that what you have done, though—and I am going to revisit your remarks as they were reproduced for us in Hansard—is give a number of specific examples that would be helpful in terms of framing the general wording and to express the principle that would, in my view, be appropriately applied in a suggested amendment.

I also want to add for the record that it is my view, and again my personal view, that the relative complexity and the technical degree of difficulty of matters before a board or tribunal are not necessarily at issue, because ultimately at the end of the day—for example, Mr Sterling is both a lawyer and an engineer. I may require things that would require considerable assistance and he may not, depending on our own particular expertise and background.

As men and women fulfil their various roles on boards, I am not sure that the complexity is a relevant issue. I think it is a general principle of what you are talking about. Again, I am not suggesting that you have said that or are limited to that. I am not sure that is necessary in terms of the rationale for what you are saying. I think that might unduly complicate the criterion by which one would apply the principle.

Second, whether the panel is composed of one or three individuals or—I am not aware of any quasi-judicial bodies that sit with more than three—but there are a number of bodies, of course, which are determined by a man and woman sitting individually, and I am not sure that is necessarily relevant to the general principle either.

1500

I use the example that Ms Murdock raised. If I were to solicit an opinion, even privately, and reject the opinion, based on some case law or precedent or interpretation of a previous decision, my use of that case law, precedent or the evidence that was put before the panel, if I was sitting in that capacity, would be referred to doubtless either directly or by inference or by implication in the written decision that I ultimately presented.

It seems to me that there is nothing nefarious or untoward or secretive about keeping those things to one's self. I think it has been well discussed, and again I will not revisit it at this point in time. The reasons that you gave I think are entirely appropriate, how people operate and how we each arrive at decisions in different ways. I think ultimately that an individual sitting in a capacity and making a decision is responsible for that decision.



On the face of the decision, what is contained therein, in the logic, if you will, to use your word, that is set out in writing, the defensibility of the decision is sufficient, in my view, in terms of a person's appeal and/or need to know, for the preservation of the right and/or rights of an individual or a group of people.

You very ably, in my view, canvassed the varieties of remedies that are available in law. Divisional Court has certainly been much more broad and, if I dare use the word, liberal in its interpretation of the tests of fairness, bias and so forth, that are being brought to bear in tribunals. All of that I simply put on the record for purposes of further discussion. I endorse the principle very favourably. I think you have given us tremendous assistance.

I hasten to add again that I believe Mr Sterling's comments are well taken. I would not want to embrace it without qualification and without careful scrutiny. But I do want to respond. I regret that he is not here, because I do not do this in a personal nature at all, but I take issue with the suggestion that there is something secretive or nefarious about ancillary documentation, draft decisions and the very able list of examples that you gave to us.

We had an individual here, a gentleman, yesterday who has a considerably different philosophical approach than I do to these types of matters, although I think many of his points are well taken. If I can use the analogy, it seems to me that at the end of the day we spilled over, just by way of background, into such things as cabinet decisions. Ultimately people in government are charged with the responsibility of making a decision, and it is the decision for which they are held accountable. How they arrived at that decision, what advice was rejected, what advice was considered, interpreted and perhaps modified in terms of consensus I think is ultimately irrelevant.

I think the same dynamic, quite frankly, takes place and I think we can do harm by losing the sense of balance—and you, Gordon, so ably drew on your experience. We forget that there is a sense of legislation that serves a purpose and that it can become counterproductive. The very utility of the legislation is defeated by making it overburdensome in terms of the process. I do not think the process ought to be significantly impeded. The fundamental principle, in my view of the legislation, is to provide openness and accessibility with respect to issues of fairness and integrity. That is a fine line.

I just say that again not necessarily to solicit a question or comment from you but for purposes of putting on the record my position, and I think perhaps that of my colleagues, with respect to your submissions. We will certainly be looking at this further and feel very positive about the suggestions that you brought to us today and thank you.

**Ms Morrison:** I would like to thank the committee in general for taking the time to listen to the submissions that the board asked me to make. I think it is a very valuable part of the process to be able to put forward a view such as one that comes from the experience of members of a board such as this. I certainly agree that this is only one point of view and you as a committee of course will be canvassing its effects in a broader framework.

That is not a framework that I was particularly either able or asked to present, so that I completely understand that this narrow point of view would have to be looked at by the committee in a much broader perspective and of course would be modified by the wisdom of the members in trying to make the legislation as a whole make sense and work. But I do thank you for listening to our submission today.

**The Chair:** Thank you for appearing here today.

**Mr Sterling:** One last question. All boards do not sit for weeks and weeks before they make a decision. Some boards sit for 15 or 20 minutes and make a decision. Sometimes those decisions are one sentence. Would you make the same requests in those kinds of situations?

**Ms Morrison:** I think in those kinds of situations there may be not very many notes that are at issue. I could not really see that they would be any more valuable to a participant in a disclosure request than the ones of a panel that sat for many days. I suppose if it was a very short submission, there might be a very short set of notes that were open for request, but I could not offhand see why there would be an argument that they should be disclosed.

**Mr Sterling:** Let's say it was not so short a submission, but it was a very short decision. In other words, it was a one-line decision after a day or two or three or whatever hearings.

**Ms Morrison:** I see, sorry.

**Mr Sterling:** The winner is not likely to be as interested in it but the loser is interested in finding why his or her request was turned down.

**Ms Morrison:** I would myself much prefer that reasons for decisions were thorough enough that both the winner and the loser would feel that they had been given an appropriate set of reasons.

**Mr Sterling:** So would I.

**Ms Morrison:** I guess there is the danger that if you make the notes available, then the obligation to give sound reasons for a decision might be affected by that. A decision-maker might say, "I am going to give a one-line decision because, if anyone wants to go behind my decision, I will have to produce my notes anyway, so I will not need to put all of it in a careful reasoned decision." That is maybe a bit farfetched, but it does seem to me if you are going to give a strong value to well-written, well-reasoned decisions that (a) there should be no necessity for disclosure of the notes and (b) it is conceivable that it goes against the value you put on the written decision.

**Mr Sterling:** In a court process, the court makes certain documents public: the writ of claim, the statement of defence. Anybody can walk in and get those documents. I am not that familiar with and I have never practised in front of your board. Do you have the same obligation?

**Ms Morrison:** Yes.

**Mr Sterling:** Is that written in law?

**Ms Morrison:** Yes, it is. It is part of both the regulations under the act and the Statutory Powers Procedure Act under



which the board operates. We have what is called the public record, which contains all of those kinds of documents.

**The Chair:** Thank you for appearing here today.

I would like to remind the committee members that we have a full day tomorrow with quite a number of

witnesses. If the committee members could remain behind for a few minutes, we have an item to discuss that has been brought up by a committee member, which we will do in closed session.

The committee continued in camera at 1509.

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M-4 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Thursday 7 February 1991

# Journal des débats (Hansard)

Le jeudi 7 février 1991

## Standing committee on the Legislative Assembly

Review of  
Freedom of Information and  
Protection of Privacy Act, 1987

## Comité permanent de l'Assemblée législative

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée

Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
Greffier : Douglas Arnott

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron

Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Thursday 7 February 1991

The committee met at 1038 in room 151.

### REVIEW OF FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

### PARENTS EMPOWERING PARENTS

**The Vice-Chair:** Order, please. Let's get started with our business this morning. I would like to welcome the Parents Empowering Parents, if you would come forward, please. Introduce your people who are making the presentation, and we will get on with this.

**Mrs Ryan:** Good morning. My name is Brenda Ryan and I am chairman of PEP Talk, Parents Empowering Parents.

**The Vice-Chair:** Welcome. I understand that you are the only people who are making a presentation this morning, so there is some latitude here. I assume that we can take questions afterwards, so please proceed.

**Mrs Ryan:** Thank you. You will have to bear with me if I make mistakes, because we have never had an opportunity to present at a committee like this before. We sincerely appreciate the opportunity.

**Mr Fletcher:** Relax.

**The Vice-Chair:** Take a deep breath and relax. We do not bite, we just holler.

**Mrs Ryan:** You mean just like home?

**The Vice-Chair:** Yes, just like at home when you have the kids running around.

**Mrs Ryan:** Mrs Davies and I have been involved with a parent support group since the summer of 1989. If I may, I am just going to take a minute and briefly read through what I had written this morning as a presentation to the committee. The reason I wrote this is not because I wanted to know what I was saying, but because I know myself well enough that if I push the start button we could be here until tomorrow.

Very briefly, in the spring of 1989 I decided to start up a parent support group. I was encouraged, and in conjunction with a general practitioner in Scarborough, Dr Jackie Gardner-Nix, I attempted to find some parents who might be interested in finding—I will start this again. I had no difficulty in finding loving parents, and we actually held our meeting with a waiting list of participating families. Our first self-help of PEP Talk was held on the 27 July 1989, and two days later my daughter died very tragically.

It is because of my daughter, Colleen, and also the information that has been shared about the child welfare agencies by members of our parent support group that we are here today. Individually, we could have been here

today to present over 50 cases as examples. But we have attempted to demonstrate our position with a very few typical examples.

At this time, all child welfare agencies in the province of Ontario are governed under the Child and Family Services Act, 1984, and this particular act does not fall within the mandate of my understanding of the Ministry of Community and Social Services freedom of information legislation.

Part VIII, sections 162 to 168, of the Child and Family Services Act regulates the confidentiality and access to records of individuals under the age of 16. Other significant sections of the act are clause 163(2)(a) and clause 163(2)(b). Without a law degree, it is very difficult for me to really relate this, but I will try to give my understanding of this material as it has been interpreted.

Basically, no individual person has the right to any information from the files which are written or prepared by any person in the employ of a child welfare agency. Furthermore, any information which is shared by them at their choice will be screened, deleted, obliterated or refused at the discretion of the particular agency involved.

At first glance, this could also appear reasonable and supportive and very necessary to protect children's rights. But in reality, this particular piece of legislation has actually been a participant in the emotional destruction and even death of a child, or a former child, who has been in their files.

To substantiate this, there is an attachment to my presentation. I do not know whether the members have been given the attachments yet.

**The Vice-Chair:** I believe they are in the process of being printed and I understand they are coming. Is that right? They will be along for you.

**Mrs Ryan:** Wonderful. First, there are the results of the jury findings probing the death of my oldest child. The report and the jury recommendations stated clearly that her death was "the result of fragmented and ineffective care, with tragic results therein."

You might ask, how does a child's death relate to freedom of information? Well, in September 1989, after her death and after numerous refusals, I was finally invited by the branch office of the Children's Aid Society of Metropolitan Toronto to review the file that they had on my child. This file consisted of probably 100 pages over the years, of which it was determined I should see only four pages. It was explained to me that they decided I could not view the balance of the file. Additionally, I was not allowed to copy or remove any crumb of information that was presented to me. I will swear this information is true.

The first page that I did see refers to the events of 24 June 1979. Colleen had disclosed to a neighbour a long-term sexual abuse by her father. The society had then ripped away my child from me and investigated the allegations.



This poor child had been tortured over a four-year period between the ages of 7 and 11, and the first page that I read on the file claims that my child was the seducer in this scenario and not the victim—a seven-year-old little girl. It also stated clearly that this child was seen as promiscuous and seductive. They felt that she was actually the guilty one. At the same time, my former husband had his name placed on the child abuse registrar. There is a copy of this documentation as well.

I later found out that on all of the occasions that I had been reaching out for the children's aid society to help my child and I thought that the workers were documenting my concerns about Colleen, they were actually writing notes about what an incompetent parent I was. I had learned this later from a lawyer who was allowed during the inquest to read the files, but she was not allowed to bring any information into the inquiry. The reason that was given to me was, "Everyone knows that things are different now," and they did not want to be in court for months. You will notice in some of the documents I have that there is a copy of the jury findings in the death of my daughter, and also a deleted format of a child abuse registrar.

My daughter was a very sick and disturbed adolescent. It was a result of sexual abuse, and the agency knew this. They knew much more about this topic than I did. When Colleen was 13 years old, I helped my child through an abortion. After her death, according to the four pages that I was given privy to review, I learned to my utter horror and disbelief that Colleen had, under the care of the child welfare agency, gone through two additional abortions. This is a little girl. What kind of kid under the age of 16 is going to have three abortions? A well-adjusted, emotionally stable child? Not a chance. A child that has had her life ripped away from her by abuse, and it did not stop on 24 June 1979. It continued.

The agency really did nothing. They knew about the psychological state of this child, and to my knowledge they did absolutely nothing to help her. My feeling is that the indicators and the signs of her mental illness were there within this child, and as a welfare agency that is responsible for this child and the lives of other children, it did nothing but lay blame and responsibility on her and me for her misfortune.

My lovely daughter, and she was a beautiful girl, is gone. The only thing left of my daughter is a legacy of words, that legacy of words in a government document, to prove that she ever existed.

I heard once that once words are written, they develop a life of their own, and the life that is representing my child on those files at the CAS is an absolute and utter lie. I do not know a polite word to refer to an untruth that is a lie. There is no accountability for social workers, with or without a social worker's degree, to justify or defend their actions within the agency. At this time in our society, the child and family welfare agencies have absolute power and control. They are much stronger than any other professional organization in this country.

As the child's parent, we do have the opportunity, by invitation, of submitting a letter to the child agency stating any disagreement that we may have with its reports or

findings, but there is no means of reacting in a civilized democratic process to seek clarification, justification, retraction or elimination of some of the garbage that it has disguised in its files as facts. If such agencies fell within the mandate of freedom of information, they could be accountable to an independent tribunal of professionals and possibly laypeople from the community for their findings and actions, and in some ways even lack of action.

1050

I have also attached a memo from the CAS explaining its complaints process. If you will read between the lines carefully, you will note that they have complete control and power. Each step of the process allows their staff to have independent negotiations and meetings before telling the complainant of their findings. If a person is not pleased after meeting with the director or the director's delegate, then basically at that point you are up the creek. That was a ladylike way of saying it.

Very few families with emotionally disturbed, high-risk children have the time, the energy or the bureaucratic savvy necessary to stand up to this organization. You have to remember that these people are also suffering through a dysfunctional family; there is a catch-all word. This point can be demonstrated with another family situation that I like to represent, again a copy of a CAS procedure with the names and significant information blocked out to protect the child and the family.

This is a man who is a blue-collar worker, a hardworking man and a passive individual who has been the subject of many years of spousal abuse. The abuse has been in many forms, including emotional and physical, and in spite of a divorce several years ago, has continued. There are three children from this marriage.

His ex has intentionally made it almost impossible for him to see his children. On one particular occasion, the youngest child spent a weekend with him covered in bruises. After carefully questioning the child, he and his friend realized that the body bruises from top to bottom were from the buckle end of a belt. He contacted the child welfare agency immediately for help, and it did nothing. He was frantic, so he called his family physician who then called the agency, and again it did nothing. Eventually the situation deteriorated further and his former spouse conveniently left the home with the child prior to the arranged pickup time. This man now became frantic, because by this time he could not even see his child to make sure that she was okay.

This man was left with no satisfaction around his concerns about his youngest child. There was no investigation done. They did nothing to assure him that his concerns were even accepted as having any merit. Then he began to feel as if the agency must be blaming him, although there was absolutely no reason whatsoever for this to happen. But again, these agencies do not have to justify or clarify their actions. So he was totally depressed and felt completely helpless at rescuing his own child.

The holiday season was coming. He had not seen his children. He had experienced significant physical health problems. Eventually everything piled up and he realized that he needed help. He reached out and he was placed in a



hospital by a caring physician for psychiatric treatment. He was emotionally exhausted.

When he arrived home from the hospital, he was issued a subpoena to appear in court the following day. There was no time to find a lawyer and his emotional state was quite fragile. His subpoena could have been responsible for having him either readmitted to the hospital or possibly—who knows?—do harm to himself. After all, everyone has a limit and this man had just received an incredible and unnecessary kick in the teeth by the documentation you will see.

The reason his appearance was required in court was to prove to the society that he was mentally competent and responsible enough to have the right to any visitation with his children. His former wife had discovered his hospitalization and must have contacted a CAS with some kind of story; we do not know. Again, there is no clarification or justification.

As an active member of our support group for a long time, this man had shown nothing but a compassionate and loving attitude towards his children and also other family situations. In spite of his own abuse, he still had no malice towards his former spouse. If any action should have been taken by the society, it should have been an award celebration for a man on the art of fatherhood for not abandoning his children, rather than this unqualified, mentally unstable father that the agency seemed to indicate.

At this point, you could feel that maybe these are unusual cases, but I can assure you there is nothing unusual about these cases. We could have hundreds of them here.

Here is yet another example. A mother of a pre-teen called the agency for help with her daughter. This girl had bizarre behaviour, where she had been staying out overnight, swearing at her mother, physically attacking young siblings and just being a hell-raiser.

After assessing the situation, it was determined that this child should be placed in care temporarily by a child welfare agency, to give everybody a break and an opportunity, and they were going to help. During the physical examination prior to entering care, the physical examination revealed that this child had been sexually abused. She had no conscious recollection of anything. Over the next two years this child went from bad to worse. If you know about the diagnostic measuring scale 3, used by psychiatrists, all of her symptoms were clear that it was post-trauma stress syndrome. It was blatant, but no one could do anything. She would be taken to the front door of a placement by children's aid and she would walk out the back door. Sometimes, apparently, this kid did not stay any more than 10 minutes. By the age of 14, she had been involved in petty crimes and she had made the big step into some very serious legal trouble. In this child's case, it was a blessing.

Her mother adored the child and she would do anything she could to help. She had done everything the social workers told her to do, and she never gave up on this kid. After this last episode, the mom once again asked someone at the CAS to help this kid. The advice given by the agency is classic. They told the mother to pick up the pieces of her life and to forget the daughter. "She's bad

news," they said, "and she's not going to get any better. It's not worth your time to get upset about her." I do not know if anyone in this room has a 14-year-old child, but how would you like someone to say to you: "Forget her. Just wash your hands of her and walk away and pretend she doesn't exist"?

Thank goodness, with the support of the group, this mother was able to make choices. She became empowered by the other parents. She decided not to listen to this worthy advice of the children's aid but to follow her own ideas. This young lady today is in the United States in an adolescent psychiatric treatment program and making fabulous progress. She will be returned to the family soon as a new person. This little lady inside the former rebellious victim of the syndrome will soon be able to present herself back to the community as an active participating member. This kid is not going to have problems, because she has the support she needs to deal with her former difficulties.

The mother is glad she did not listen to the agencies. Where would her daughter be today if this mother had listened? Imagine. What on earth could the society have been writing about this child to be content with giving that report to the parents, this kid's emotional death certificate?

Once again, you tend to think that maybe these are unusual cases, but I strongly restate that these are not unusual cases. They are everyday occurrences.

There is another story that is a cute one: a young man who within a period of one week became a one-man wrecking crew. He physically attacked his sister, having her hospitalized. He then tried to strangle his mother, snuck out the bedroom window in the middle of the night and stole the family car. While he was on his joyride, he destroyed the car. When his parents arrived on the scene, he threatened to hang himself from a tree.

After two independent psychiatric assessments, the juvenile court judge ordered the agency to assist this child in getting treatment and to be placed temporarily away from the home, obviously for the welfare of all people, including the sibling. Well, it has been a year and this kid has deteriorated. Of course, there is no psychiatric treatment. The society took it upon itself to place him in three different foster homes to date; no psychiatric facility, just foster homes. The homes are not equipped to handle psychiatric patients, and the foster parents may not even know that they have a very unstable, emotional little boy in their home.

The police are accountable to an internal tribunal, other police departments and an independent civilian committee. Doctors are accountable and controlled by the College of Physicians and Surgeons of Ontario and the judicial system. Lawyers are governed by the bar association and the courts. All types of engineers are licensed and accountable to the professional engineering association and, of course, the judicial system. All journeymen—by journeymen I mean electricians, plumbers, driveway pavers—are controlled by their Metro licensing commission or equivalent, but child welfare agencies under the jurisdiction of the Child and Family Services Act are given absolute impunity.



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Just look at the inadequacies in the system. A psychiatrist, for example, will spend 10 years in school learning his profession and years of internship, as do many other associations I have mentioned. Still, they have a financial liability to their client. A social worker could spend only two years in a community college and know nothing about law or the diagnosis of an adolescent in child psychiatry, yet have more power and control over the destiny and treatment of a young person than any other individual, with no fear of any kind of personal liability.

Again, under the act, this person cannot be held accountable. Our association, PEP Talk, is not asking for families to have absolute access to a child's record. I think we all know that there are children in our society that are being abused in one manner or another. If there is one child in our society being abused, that is one kid too many, and I would not want to sacrifice one child for any cause. So we do not want to suggest that families have this power, only that child welfare agencies to be accountable to an independent governing body, like all of the other agencies we have mentioned. It is ridiculous; it is bizarre.

**The Vice-Chair:** Thank you very much for a clear presentation. With the consent of the committee, we will start our questioning with the official opposition, because we are a bit unclear in the Chair as to where we left off. Is that agreeable?

**Mr Morin:** I would just like to make a statement. I am very moved by what you said. Anyone listening to what you have said who is not affected by that—it is not the first time I have heard of cases similar to that. I had the experience of working with the Ombudsman for 10 years. It is very difficult to pinpoint that type of incident unless you investigate it. I wish the committee would pay particular attention to this complaint brought by this lady. We should do our utmost to try to find a solution and to prevent that type of thing.

**The Vice-Chair:** Forgive me. I am new at this. Carry on just as you wish.

**Mr McClelland:** I think Mr Morin has stated our position well.

**Mr Villeneuve:** Thank you very much for a very moving presentation. As an elected person, I have been made aware of certain situations, mostly by distraught mothers who have problems with their children, much as you had problems. Children wind up in a hospital to receive treatment, but the first thing they are told if they are over 16, is that indeed they are adults, they do not have to confide in their parents if they so desire. It is very alarming, because, in this case, I, as a non-professional person, could genuinely see the concern of the parents, yet the system was encouraging the child to distance herself/himself from the parents. Indeed, the lack of communication was part of the problem.

I think the situation you have described in one of the scenarios here is very similar to what we probably have all experienced with parents who, in total frustration with the system, come to us. We try and get involved and we are told, "Well, we just can't divulge any information." It is a

chicken-and-egg situation. We are all so helpless, yet help is so desperately needed. Could you comment on the fact that institutions appear to be encouraging a kind of situation that, to me, should never exist?

**Mrs Ryan:** You will have to excuse my delighted grin, because I am just busting a gut at the moment about a comment you made about 16-year-olds. Surprise, surprise. If a child is deemed to have a behaviour problem, as a parent you lose the right, when the child reaches the age of 12, to do anything about it. The child has absolute power. Interestingly, as a parent, I am told in the field that the child has a right to refuse treatment and we cannot do anything.

I have spoken numerous times with the committee at the children's services branch at the Ministry of Community and Social Services and they have assured me that the legislation under the Child and Family Services Act does not say that a kid can refuse. It says they can object. Now that makes me feel so much better, right? So I have a distraught, emotionally disturbed, acting-out, 12-year-old psychotic child on my hand, but he or she has the right to object. Then the advocacy office and other child welfare agencies say: "Of course. We know this child became this way because of dysfunctional, incapable parents, and that child is being protected from them. It's natural."

I would like to take a moment and show you some pieces of literature we have, which will verify and prove many of the things we have said. The review of legislation governing children's mental health services states very clearly that it is much more difficult to have a child treated for mental health than it is an adult. I am sure everyone here has heard how difficult it is for an adult to be treated, but it is tougher for a kid.

Also, there is a report called the Ontario Child Health Study, done in 1989 for the Ministry of Community and Social Services. If anyone here is familiar with this particular study, it indicates that 18.3% of our children require some sort of mental health service, which means we are talking almost one in five. One in five children has a diagnosable problem, but of course it is mother's and father's fault, because these kids are great, so these kids are given the power.

I am not suggesting that kids do not have rights. I am a child advocate, but as a child advocate, children do not know how to communicate and sit in a room like I am doing right now and articulate what they feel. If a child is frustrated, ill, upset, they will only communicate in the manner they know, and that might be things like picking up furniture in a classroom and throwing it at the teacher; swearing at dad; staying out all night drinking; being sexually promiscuous if you are an 11- or 12-year-old child—because that is the only way they know how to communicate. They do not use language as an adult does.

For the legislation under the Child and Family Services Act to be written in such a way that we put a child in the position that they are expected to communicate on our level is bizarre. That is what we have done. There is very little provided under this act or any kind of program that will allow for a child to even communicate his problem in a way that is best for him, which may be music therapy, art



therapy, dance therapy. There are many ways for a child to communicate, but we do not give them that right. We say to them: "You come in here and you state your case, young man. You come in this room with your mother and father and we'll sit down in front of you and you just tell us what the problem is."

**Mr Villeneuve:** We certainly have many dedicated people that work within ministries that you have touched through the children's aid society. I realize there are times when it is difficult and there is no clear-cut solution. Under freedom of information, you have great objection, first, that you were not allowed to see information about your child and someone's interpretation of the family background. You saw four pages of maybe 100 of documentation, and most of what you saw you certainly did not agree with. There is no mechanism. It is an even more frustrating scenario when you are able to see what you perceive to be false information and you cannot do a thing about it.

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**Mrs Ryan:** That information was responsible partially for the decline of my daughter's health, because they literally, with the attitudes of the reports they had written—and not only my daughter, but some of these other children—prevent the access of professional support and treatment. By the time she became an adult she was a chronically disturbed person.

**Mr Villeneuve:** And the fact that two abortions she apparently had, you were not aware of until such time as you saw some documentation.

**Mrs Ryan:** That is correct. Three months after her death.

**Mr Villeneuve:** Very difficult. Thank you for sharing your thoughts. This committee should look at—freedom of information is great, but it had better be accurate information.

**Mrs Ryan:** We have to protect our children. I do not know what the solution is, and I am not really suggesting that the community at large be given access to children's files, but I think there are enough organizations of knowledgeable professionals who understand children that are not a child welfare agency, that should be able to review, maybe lawyers and police officials and doctors, maybe a layperson. But they have to have accountability. We could have a situation where we have five psychiatrists who will do a psychiatric assessment on a child, each doctor in absolute agreement that there are not just emotional problems but organic brain disease—you could compare organic brain disease to diabetes, cancer, cystic fibrosis—but we are stripped of the right to save our own child's life.

**Mr Villeneuve:** The most recent incident that occurred from my constituency office disturbed me. The young lady in question did not receive psychiatric help but was told of all her rights and the things she could prevent her parents from having access to, yet that was the problem. The interesting thing was that I could not do a thing about it, nor could the mother.

**Mrs Ryan:** The child has the right under the Child and Family Services Act to legal representation to go all the way to the Supreme Court to fight for the right to

refuse treatment. The family, on the other hand, has to pay out-of-pocket expenses and obtain their own lawyer for the right to prove to the courts that the psychiatrist or the professionals who have done psychiatric assessment are telling the truth and that they are willing to save their kid's life. Having said that, if you win in a court of law, you win the right to prove that your child is ill. You still cannot treat the child. It is absolutely against the law.

**Mr Owens:** It may be a little incongruous to tell you that I want to thank you for your disturbing and frank presentation. Over the last couple of weeks, I have sat on the standing committee on social development. We dealt with children's mental health services within that committee, and the authors of the reports, Dan Offord and Colin Maloney, appeared as witnesses. We will be tabling those reports in the Legislature when the session resumes, and I am hoping you will be pleased by the recommendations you will see with respect to children's mental health services. There is a recognition that we are getting to these kids too late. It is a tragedy that these kids are dying before services are able to be effective.

The second thing, if we can have all-party agreement, is that I would like to have us invite the children's aid societies in to make a presentation on how they view freedom of information. I am very disturbed by what has been stated here today and I think our colleague Mr. Villeneuve makes a very good point about it. It is fine to have information out and available, but the accuracy needs to be there and I think we need to hear from the CAS or other child welfare agencies on how they view this legislation and the types of changes they would like to see with respect to making it more open.

It is clearly unacceptable that four out of 100 pages or so would be made available to you, and that within those documents the inaccuracies—I suppose it goes without saying that a person who is disturbed may not be 100% on in his facts, but if the child welfare agency is using the facts as its basis for its treatment of the parents, then I think it is a fine line as to who you believe. I wrestle with that on a daily basis as we go through these hearings, especially when we start dealing with issues revolving around children and children's rights.

**The Chair:** Is that a request to the committee?

**Mr Owens:** Yes.

**The Chair:** Is there agreement on that request?

**Mrs Marland:** Definitely.

**The Chair:** Okay; thank you.

**Mr Owens:** I am intrigued by your suggestion about a panel, to have the agencies responsible to the panel. Would you see that as a method of vetting information to deem what would be appropriate for release? Could you explain to the committee how you would see that working?

**Mrs Ryan:** Yes. I think somewhere along the line the community at large has to depend on the discretion of the professional community. If in fact an independent committee could be established where it would review the facts and make a decision about what is or is not admissible or



releasable information in a particular case, that could be in the best interest of all parties.

The child welfare agency would still be protected from information that should not be revealed. The child can be protected and have security and safety in being able to discuss whatever he needs to discuss without fear of reprisal. Also, it would give the families an opportunity, if there has been a misjudgement made—in particular I think about this father—it gives someone the opportunity of clarifying and rectifying that. We are talking about families and lives. It is not like a little mistake on a piece of paper.

**Mr Owens:** Absolutely. Perhaps if we were to make recommendations of that type to the Legislature and to the minister—I am certainly leaning that way, because I think you have crystalized a very difficult problem. As a matter of fact, I had a meeting in my office last night with a family which is experiencing similar difficulties with respect to getting treatment for their son who has a mental illness, and he falls into this crack of rights versus reality. The child is abusing the family and tearing the house up and doing all these other things.

**Mrs Ryan:** But is he enjoying it?

**Mr Owens:** So these problems are coming to the forefront more and more as we proceed. As I say, I am leaning towards making a recommendation with that in mind, and perhaps while the committee is reviewing case work, if that is the way it were to be set up, an advocate would be there for the child to ensure that his or her rights are being respected. You have brought up so many excellent issues. Protecting the child from reprisal from either parent is another issue that needs to be discussed. We could probably spend the rest of the day discussing this and working around ways that we could make the system more effective for both parent and child.

I will turn the floor over to my colleague.

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**Ms S. Murdock:** I want to thank you as well. Just for clarification for me here, I see that there are two basic arguments you have. One is, of course, access to information and the reliability of that information, which comes under the purview of this committee, but then the second thing I see is that you want the people involved to be accountable to some agency. Now right off the top, and you can correct me if I am perceiving it differently, I do not see the Freedom of Information and Protection of Privacy Act as being the piece of legislation that would allow for that accountability. I would see something like the Health Disciplines Act under the Ministry of Health, where they have provisions for case workers and social workers who are not allowed to make diagnoses and judgements without penalties being imposed. So I am wondering, am I seeing that correctly? Am I stating the case?

**Mrs Ryan:** Yes, you are doing extremely well, and thank you for the education. Now I know who else to go to. Yes, you are absolutely right. My feeling, and the thing that we discussed as an organization, was if there was a freedom of information act committee, human nature being what it is, people would tend to be careful and a little more thorough before they documented anything. So that

was number one. Number two, I guess my own self I did not realize where the mandate of one committee starts and another one stops. Health services?

**Ms S. Murdock:** It is under the Ministry of Health and it is the Health Disciplines Act.

**Mrs Ryan:** So possibly the Ministry of Community and Social Services could be involved.

**Ms S. Murdock:** Yes, certainly, they would have access to that information.

**Mrs Ryan:** Thank you for that.

**Mr Fletcher:** You answered one of the questions already. Just let me say that I am glad you are here and making this presentation. Mr Owens did ask my question about what you saw as being necessary for some amendments to this or some idea, and you said that.

You said that if there was more freedom of information, there would be better notes and better reports, and I think that is important. That goes for what we have been discussing here this week as far as making notes available is concerned. They would be better notes. There would be better reports and they would be probably a lot more honest than what they are. I thank you for bringing that point up.

**Mr Owens:** I would like to make another request of the committee, that at some point within the review period of this legislation we also invite the Minister of Community and Social Services to appear. Her ministry deals with child welfare and indirectly the type of issues that we have raised here. Certainly freedom of information is an issue within the realm of her mandate. She is struggling with it at this point through area offices. I think it would be appropriate to have the minister in, or a representative of her ministry, to discuss the type of impact this legislation is having, and the types of changes she would like to see made to the legislation.

**The Chair:** Is there a consensus on that? Great.

**Mr McClelland:** I appreciate, quite frankly, your presentation, and without even beginning to understand a sense of what it must have taken for you to come and visit us today, and for that I am grateful.

One of the things you touched on throughout the course of your presentation, it seems to me, was a real balance in the sense that you said with respect to agencies and the situation that you face, particularly the CAS, that you see there is a twofold problem.

One case might be that from an implementation point of view they may be too obtrusive in acting in a situation that in your judgement and the judgement of parents would be overstepping their bounds. Yet on the other hand there are situations—you referred to one—where the failure to act was the issue. It seems to me, and I will not presume to speak for them, but when we hear from them there will be an argument presented, I am sure, that says something to the effect that “We require the confidentiality in order that we can advocate and act in the best interests of the child.”

How would you respond to that in general terms with respect to the need for somebody to act independently as a child advocate, your experience not only personally but as



an organization with respect to who and what is there now, to act as a child advocate and the need for that role to be severed apart from the agency providing the care? That is very general, but I would like to draw on your experience individually and your experience from those parents with whom you meet and work.

**Mrs Ryan:** An independent advocate is absolutely required in the province of Ontario for the benefit of all agencies dealing with children. I try not to get burdened with negativism or blame or hatred, when part of it, in my heart—I lost a child—is there. But I do know that people can only deal with a particular situation, regardless of what their training is, based on their own emotional baggage, so mistakes are made.

When we are dealing with the most precious item in the world, which is the lives of children, we absolutely cannot compromise that. When I compare the fact that we will put security guards around a Plexiglas display of expensive jewellery, and we will let children drop off the edge of the earth and never wonder what happened, it is just not realistic. We need an absolute, independent organization which is not a government agency, which is not given any mandate except to clarify, rectify and improve children's services.

I believe that in November or December, after a lengthy inquest, I heard Mr Rae state in question period an indication that all vulnerable people in the province of Ontario should have independent advocates. It is one of the very few times I jumped out of my seat and spoke to the TV when I was watching the House. But it is true, and I keep reading the paper every day saying, "Has anybody been appointed yet?" Oh, by the way, I am up for the job.

**Mr H. O'Neil:** Like the rest of the committee, I would like to thank you for coming this morning and sharing this particular terrible experience which you have had, but I guess I would like to approach it in another way. I do not want you to take offence at this either, because I think what you have experienced is a terrible thing.

I come from an area where I believe we have a very good children's aid society, which is the Belleville-Trenton area, the Hastings and the Prince Edward children's aid, which I believe have a very good staff and a very good board and I think quite a fair amount of support from the municipalities. But even with that, with an excellent children's aid society, we also are experiencing some of the problems you talk about, particularly in the children's mental health area.

Having been a member of the previous government, knowing what the pressure is on the government from all areas of health care, I know that we have dealt with it before and I know that over the last five years—even with the previous government—a lot of money has been put into this area, very huge sums; I know when we dealt with it, over four or five years. Again, I am not trying to be apologetic, because no matter how much money we have put into it, until we start to solve a lot of these problems, it will never be enough.

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I was very pleased to hear the comments that were made about the social development committee handling this, because I think it is where we made a number of improvements over the last few years. Hopefully, the new government will also look at the area of children's mental health as being an area that really is in need of additional money to provide additional staff, so that these cases like your own can be dealt with on an individual basis.

Again, I want to reiterate that where you may have had a bad example—there are likely many examples right across the province in all of the children's aid societies—many and most of these children's aid societies, I believe, have some very dedicated, caring people. Maybe they have not had, as I mentioned, enough money support to hire the staff to give this individual attention, but there have been a lot of improvements made, and I think it is because of people like yourself coming forward today before this committee. You help to reiterate the importance of this particular area and how now the new government will be faced with these same demands. I think money has to be freed up to get the type of help that is needed.

**Mrs Ryan:** I certainly appreciate your input that there are some particular areas where there are very high-quality child welfare agencies. You may find the community enlarging very quickly with a lot of people moving up there.

Having said that, I have tried to be very careful not to specifically lay blame on the quality of personnel or a particular agency. It is the whole system around the legislation of the Child and Family Services Act. Why one particular area of this province has an extremely successful, high-functioning child welfare program, I don't know, but if it is happening, I think probably some of the other members from other areas who know it is not that way in their territory could maybe find out. Maybe that region should be teaching. I am not trying to be facetious. A little bit of good is great, but it does not begin to be enough.

I do not have little children any more. My commitment now is for the next 20 years, to make sure that my daughter's suffering will benefit children. If one child in one area is being inappropriately treated by a program, it is too many. I am here for that one child today or tomorrow or next year or 10 years from now, because it does not matter what happened yesterday; it is today and tomorrow that I am here to speak about.

**Mr H. O'Neil:** I think the point you make is an excellent one, as I said. I think it behooves the new government, and us as opposition parties, to give the type of financial support that is required to really rid the province of some of those problems, the one that you have talked about and many others that we have. I thank you for appearing before the committee.

**Mr McClelland:** I actually wanted to continue a little bit our previous discussion in part, but I might just add, further to Mr O'Neil's comments that my sense is—I cannot say this with any empirical data that would give it any weight of authority, but just from the experience I have had, having worked within child programs professionally and in my law practice and so forth—that in most cases,



most of the time, agencies perform their job not only adequately but extremely well.

I share your very heartfelt opinion that if there is just one situation—there are many more than one, but even that for one—the work you are doing and the role you are playing in helping us to begin to deal with that is very worth while. I do want to underscore what I think is an important statement made by Mr O'Neil that the people, and as you said, the personnel, are only operating within the framework they are given by us. We accept the responsibility for that and also accept the responsibility of trying to appropriately make changes to assist them to do their jobs as they need to do and want to do.

Right now, freedom of information, the principle of the act, of course is that there be a presumption of availability of information. The general scheme is that there is presumption of availability of information and then exemptions are granted. As you point out, the Child and Family Services Act is exempt in total.

I am interested in your comments on two points. One is with respect to the fact that there is really a reversal of the principle in this case, that there is no onus to provide information, there is really no proof required. There is no onus on the agency to demonstrate why it ought not to disclose information. In fact, the shoe is on the other foot and you have to fight for every piece of information you are going to get as a parent.

How would you, in your view, see a balance with that? Who would be the people or person who would determine what information ought to be released to parents? Again, correct me if I am wrong, it seems to me from what you have said that you have accepted the proposition that there are times and places and certain given situations where it is not appropriate that the parent have information. I think you have indicated that, that you are willing to accept that.

**Mrs Ryan:** But the world is not full of good people, unfortunately.

**Mr McClelland:** Yes, exactly. Who would be the individual and how would they make those determinations, under what terms and at what point in time? Ultimately, legislation is words, and decisions are made with respect to timing, ages and certain rules. When is a child no longer a child? A tough question, I know. It is such a subjective element, such a subjective matter with some children. So how do you wrestle with that very issue of saying, "When I am 19, I have the right to call my own shots." In the act right now, as you have said, there is an effective giving of rights at the age of 12. Where do you find that line and that balance? And I am not asking you. I do not presume for one minute that you would even hold yourself up to having reposed the wisdom that would have the answer. I am just asking for your help on this from your broad range of experience.

**Mrs Ryan:** I hope I remember all the questions you asked, because they became more exciting as you went along. I think Mr Owens and Ms Murdoch had discussed this particular issue about how or who would decide, and an independent committee—not the community and not the agency but a well-established, respected, appointed

committee. That way everybody is protected and a child would not be risked.

**Mr McClelland:** How would you respond to the assertion that that is the role of the board of directors of the local children's aid society as it reviews the decisions of the directing staff? I am playing devil's advocate for that, because that is an argument that is going to be put forward.

**Mrs Ryan:** It is like putting the kid in the candy store.

**Mr McClelland:** At some point in time the board that you are proposing is going to become part of the institutionalized system, in any event. It is the way our society works that a body is set up and it becomes part of the mainstay.

**Mrs Ryan:** Maybe by then there will be some other mother here with a better idea behind me.

**Mr McClelland:** No, I am just asking because we are going to hear that argument.

**Mrs Ryan:** We can only work with what we have. We cannot plan any program to be here for eternity. That is why you guys have jobs. It is constantly improving quality of life and programs to the community.

**Mr McClelland:** Again from your experience, are there situations and places where the role of the local board, the volunteer board charged with the responsibility for policy and the overseeing of societies, is fulfilling that role adequately at all?

**Mrs Ryan:** Without appearing confrontational towards the agencies, I do not feel that independent boards of directors are beginning to even consider what is happening within those agencies, and I do not think that an independent board of directors should be lumbered with the responsibilities of reviewing independent situations.

You asked me one other question that I think was very significant: When is a child not a child? Again, you see, there is no real answer. I have known 32-year-old children, 58-year-old children and I have known 12-year-old 27-year-olds, depending on the individual. But I think the rule of thumb to say that a pre-teen is an adult capable of making absolute decisions—that is the key, absolute decisions—about his life, particularly when it is a mental health problem, is wrong. The analogy I will use about the mental health situation is that we would not dream of parking an ambulance two blocks away from an accident scene and telling a kid with two broken legs to walk to the ambulance. But we tell a child who has been diagnosed and assessed with severe emotional mental health problems to decide to take treatment. Now, I do not know if anyone has ever experienced this, but if anyone has ever met a psychotic, disturbed, organic brain-disordered child who came to an agency and said, "Please treat me," I am going to take my hat off to this child. There should be a statue on the corner for him or her, because it does not happen. Part of the illness itself is presented in such a way that the child does not ask for help, does not realize what is happening.

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**Mrs Davies:** And actively rejects it. And actively rejects help.



**Mrs Marland:** Mrs Ryan, I have read your brief since I have arrived and I am sorry I did not hear you present it in person, but it is very apparent that the impact you have had on the committee members here this morning is very real and I cannot help but think about the name of your organization, Parents Empowering Parents, because your presentation this morning is actually empowering other people. Probably most of us are parents, but not with the experience that you have. I have a couple of questions that I want to ask you.

I must just say one thing, where you say that your lovely daughter is gone and the only thing left of her life is a legacy of words in a government document that she was here, you know, your daughter has left a legacy in a mother who is very capable and very effective. I have been in politics 17 years and I have heard a lot of deputations in that number of years on many, many subjects, and although I have experienced the loss of a child in totally different circumstances, I cannot say enough about how effective you are. You are a tremendously commendable individual.

I am just wondering, through your work with PEP, if you could tell me where the role of the official guardian fits into all of this, or do you, through your experience and your research, find that the official guardian's office is just another bureaucratic agency?

**Mrs Ryan:** My experience in terms of the official guardian's office has been moderately positive. They do their work well, but my understanding again is that they are only given what they are given by a child welfare agency. So, like the rest of us, they can only work with what they have got. I think my own personal exposure to the official guardian's office is that, from what I understand, it has been doing a wonderful job in terms of addressing within its mandate and the information it has.

**Mrs Marland:** But their mandate is limited to when it gets to requiring litigation, and that is the problem, I suppose.

**Mrs Ryan:** That is right. I think that in terms of the official guardian's office, one little personal ditty that I will add, I know of a particular case where a child was orphaned and was left an inheritance, and the inheritance was, of course, being controlled by the official guardian's office. The will of this child's parent suggested that the estate be given to the child at X age. Under the mandate of the official guardian, it says that they can get it at Z age, which was younger than what the parent's will had requested. I spoke to the official guardian's office about this and I said: "I have a concern. My understanding is that the mother of this child would like her will to be honoured." They said, "Well, we will never really run out the door and down the street and tell this kid that her money's available at this time." They realized that they were of two minds, that legally they had to give the child the inheritance on a certain date and time.

**Mrs Marland:** Even in conflict with the mother's will?

**Mrs Ryan:** Even in conflict with the mother's will. The mother had wanted the child to receive the inheritance at age 25. My understanding of the official guardian is, once a child reaches the age of 18, he is entitled to his funding.

**Mrs Marland:** That is amazing, that there are statutes that supersede wills. I'm looking at Carman as a lawyer, because I did not know that.

**Mrs Ryan:** That is the other thing; we do not find these things out until it is too late. Can you imagine what this mother would have done if she had been able to pop out of her grave? So we all agreed—wink, wink—that we would not tell.

**Mrs Marland:** Yes, yes. When you talk about your vision of an independent committee or whatever other name we should give a commission to be that step-aside, perspective view, I am sure you are aware of the independent committees that were established to deal with early school leaving. They were very much community-based committees. I remember when they were set up in the early 1970s when I was on the school board in Peel, and we were very careful about the people we appointed to those committees. They were very representative of parents and other people within the community. And generally, thank goodness—and I do not say this as a slight to professional people—they were very much grass-roots people who had that wonderful grass-roots—

**Mrs Ryan:** Common sense?

**Mrs Marland:** —common sense. Thank you.

**Mrs Ryan:** It is a wonderful value.

**Mrs Marland:** Yes, is it not, and a very refreshing perspective that they did not come to those early-school-leaving hearings with any biases that every child should stay in school no matter what, because that is the best thing for the child. They did hear the individual applications very sincerely, and I think that system was very successful. I am hearing very clearly what you are saying this morning about how something like that could be in everyone's best interests.

**Mrs Ryan:** Particularly the child's.

**Mrs Marland:** Yes.

**Mrs Ryan:** That has to be the overriding factor.

1150

**Mrs Marland:** It is very clear to me what it is that you have told us this morning. It is also reinforcing for me that I know in the last number of years here at Queen's Park, which I have only served in opposition, that we have continued to ask the government to address the fact that we have 10,000 identified kids, children, who have very special needs because of severe mental health disorders. How horrific to think that this number exists, and I know, as I have asked from time to time for us to stop doing studies and stop referring it for another report, because we do not need any more words, we do not need any more printed reports and studies, because everything is identified. The needs are out there.

I have heard some examples this morning from my colleagues about people they are dealing with in their ridings. I am certainly dealing with a number of those in my riding. If I ask anything of any government, it is that it sets priorities in terms of human needs and we stop adding new programs that we can do without. And we might have to build fewer highways and bridges and superstructures



and those hard services and look at the needs for our soft services in terms of human beings in this province.

When I think of what you have brought to us and the power of what you have brought to us, as I said a few minutes ago, because it is based from a personal experience, it is like everything that is illustrated to us as politicians. I always feel that no matter what it is that is brought to our offices, it is, "There but for the grace of God go any one of us," and we should always remember that whether it is Queen's Park or Ottawa, there is only so much money. The government is the people. If the government is doing its job, it is not a body over there and the people are here. The government is the people. It is our money. I think any government of any political stripe can stand on any public platform around this province and defend spending money in a system of priority dealing with human beings. And I think if, from hearing from people like yourselves and your group, we can persuade governments to recognize that in a not perfect world where money does not grow on a tree, we can decide that what is defensible is dealing with those priorities first and letting the others fall in behind and not trying to be everything to everybody.

**Mrs Ryan:** If we do not do it now, I think that, having the superhighways, 50 years from now there will not be enough people to use them. Read the newspaper any day. We know how bad the situation is. I think you are absolutely right. The reports have been done. They have been done over and over. I have forgotten which article I read it in, but there was a report that stated the annual expenditure per child in the province of Ontario in mental health treatment was less than \$3,000. What is the cost of keeping one prisoner in jail for one day?

**Mrs Marland:** A good analogy. Thank you very much for being here today.

**The Vice-Chair:** Mr Owens.

**Mr Owens:** Thank you, Madam Chairman. I would also like to thank you for the latitude that you have allowed committee members today to express their concerns about this rather important subject. I would just like to push that patience a little bit closer to the envelope by saying that the constituents that I had in my office last night sat with me in tears talking about the priorities that this society has. While it is all fine and good for us to protect animals and plants and things like that, what are we doing for the kids? That is the reality: that we need to reorganize our priorities.

I would like to talk to you again about the type of agency you would like to see set up. How far would you see the agency or board going in releasing information? I know you placed some caveat in your presentation, that you would not want to see all information. Where would you draw the line in the types of information that would be released?

**Mrs Ryan:** If a child has revealed to an agency information that upon release from the care of the agency would in some manner jeopardize the health, safety or welfare of that child, it should not be revealed.

**Mr Owens:** In terms of restricting where the information would be passed to, a parent or advocate, where

would you see the restrictions being placed and how would you determine who was the fit parent, if that is an issue?

**Mrs Ryan:** I do not see that it is being a fit parent. I guess I am biased—I am admitting it—because my feeling is that if you are a guilty parent and you have abused your child in any way, you know it, the agency knows it. Who are we kidding by keeping it hidden? The parent may not have the right to have access to the specific information, but in my opinion it is quite all right for a committee to say, "Mrs Jones, Mr Jones, Mrs Smith, this information cannot be revealed because it relates to particular information that your child has given us regarding abuse."

When you think about it, a person charged with murder has the right to remain innocent until proved guilty in a court of law, but a parent or another person could be slandered and there is no avenue for verification or rectification of whatever was written in that report. If in fact a person is slandered—and I imagine there will be occasions—we have courts in this country. We have a family court system now where it is all confidential.

**Mr Owens:** This is the fine line I referred to, that I struggled with earlier. When you have got a child stating information with respect to one parent or another, at what point do we cross the line and say, "The child is wrong, the parent is right" or vice versa?

**Mrs Ryan:** I think that has to be addressed through experts in child abuse, both from physical evidence and psychological evidence, through legal proceedings and experts in those areas. I could not hazard to begin to suggest that I would know those, but I know that if there was a brainstorming committee of people in specified areas of expertise, jointly you could come up with a fabulous idea.

I know it could be done and it is not that expensive. I am not making a presentation here that is asking for the development of some kind of grandiose scheme that is going to cost zillions of dollars. This is just utilizing what we already have in the province, which is committed, caring people, but give them an opportunity to save lives.

**Mr Owens:** Sure. As I say, I tend to lean in your favour with respect to establishing the type of committee, board or agency that could review the situation. You talked in your presentation about some fairly horrendous treatment by staff people, and I would like to concur with my colleagues in opposition that for the most part agencies and persons working for agencies tend to give not only 100% but usually 110% under very stressful circumstances.

Would you see again this mythical agency that we have established today having a power to discipline or censure, something like the College of Physicians and Surgeons of Ontario or the Law Society of Upper Canada? Would you see that as being a function of that committee or would you see it strictly as an agency to vet information?

**Mrs Ryan:** I think it would have to be two committees. We cannot be experts in two fields. If we expect an agency to be able to take the information and neutralize all the information for the best interests of all concerned, that would be a wonderful accomplishment in itself. But to expect that same committee to look at being responsible



for liability of professionals would be inappropriate. Maybe the College of Physicians and Surgeons of Ontario would like to take on the responsibility of social workers. That way we would not have to build another building.

**Mr Owens:** I am going to try the patience of the Chair one more time. I would like to ask you a little bit more about your organization and how many members you have and the type of catchment area that you work within.

**Mrs Ryan:** We have at present probably about 50 families that are members. There is no money involved. There is no catchment area. We have our meetings once a week in a public school building, in a room that has been given to us for using, and it is held in a very discreet manner because we have to protect the children and families. We do not want to have a meeting where someone could walk in off the street and hear us discussing a horror story about our children.

We meet once a week for an hour and a half for emotional support. It is getting out the stress and the tension of six and a half days of problems. It empowers the parents when they hear stories of other families and they may have failed for six and a half days at home. During that hour and a half they can contribute some successful parenting skill recommendation to another family and go home feeling better about their own personal self-esteem.

1200

The other thing we have done is that we have said in our group, "We cannot sit here and complain." We have the general practitioner take part, because we did not ever intend to become professional-bashers as a self-help group. We wanted to learn how to work best within and with the professional community in the best interests of the children and the family. By having a medical doctor there, that helps us with some information that we would require on different occasions.

When the families became frustrated about the situations—and like I said, these stories are nothing; we can go for hundreds of them—what we agreed is that, as a committee, we would do just what we are doing today. Many of the families cannot publicly come out and expose themselves because of the situation they are dealing with at home with their children. But, as a committee, we have had invited representatives to our meetings. They have attended and the families have felt very much empowered that they were able to contribute something constructive to the government.

**Mr Owens:** Just one final statement, Madam Chair. As a person who at this point is not a parent, but as a human being, my heart certainly goes out to yourselves and to the parents and children that you are aiming to represent. I heard you mention Scarborough in your group, and I happen to be the member for Scarborough Centre. If there is anything that we can do for you, please do not hesitate to call us.

**The Vice-Chair:** Thank you, Mr Owens. You did not try my patience as I am going to try yours in a minute. I wish to thank the presenters very much for coming. It certainly is a heartrending situation to sit here as a mother and grandmother and listen to it. But I do thank you very

much. As Mr Owens has just indicated, if at any time we can be of any help, please call us back. I will excuse you at this time. Thank you very much. I ask the committee to please remain for a moment or two. I told you I would try your patience.

**Mrs Ryan:** Thank you very much for the opportunity. We do truly appreciate it. Thanks.

**The Vice-Chair:** Mr McClelland has asked for a few moments just on something regarding procedure. Go ahead please.

**Mr McClelland:** It just seems to me on reflection on the comments that Mr Owens made with respect to the Minister of Community and Social Services, I have no objection to bringing her, but as I reflect on it, it is clearly an issue with respect to welfare legislation and the Child and Family Services Act. We really do not have any mandate or authority to do that.

I think that what we have to do is turn our minds to the general principles of FOI legislation, and to the degree that it impacts Mrs Akande's purview of responsibilities, I think that is something we can recommend to both the minister and to the standing committee on social development. As I have reflected on it, Mr Owens, it seems to me that we would be spinning off into something that would really take us away from our responsibility and our mandate.

I simply leave that for your consideration in response to that, because my initial indication was to nod my head, "Yes, I think it's great for the minister to come here." As I think about it, I am not sure that would serve our purposes well, and more appropriately would be a recommendation, as I said, both to her and her staff and the standing committee on social development to consider the application of FOI with respect to legislation under her purview.

I simply say that for the record and our deliberations and for the clerk's consideration before we bring Mrs Akande here without giving it a bit further thought. I am not suggesting we determine that right now. I would just like you to think on that prior to our next subcommittee meeting.

**Ms S. Murdock:** Actually, it is a good point, and you are right. I think, though, it was either that the minister or the staff come in. But it probably would not be a bad idea to find out what criteria they use to determine when they refuse information to be released. That is the only thing I would like to find out.

**Mr McClelland:** I do not want to get into this, Madam Chair. A brief response, because I am not sure we want to get into the argument and join in a debate right here. Whatever we set out with respect to freedom of information legislation, it will still remain the responsibility of various ministers and ministries to seek those exemptions or to put it in that particular legislation. At the end of the day, this committee would have no bearing on that. I just leave that again as something to think about, that we could go through the exercise, determine whatever we want to determine and it is still going to have no impact.

**Mr Villeneuve:** I think Mr McClelland is right. However, we have identified a major problem, one that we as MPPs live with. Whether the honourable minister is here

or not, I believe it is our mandate to address that problem, and it has been clearly identified this morning.

**Mr McClelland:** I just want to think about how we do it.

**Mr Owens:** I think Mr McClelland makes some good points. What I would like to do is, as Mr McClelland suggests, think about it and perhaps draft a letter to the Chair as to my intent with respect to the invitation to the minister or her staff to come in.

I am not sure whether my office is unique in terms of dealing with welfare offices and FBA offices, but we are having some difficulty in getting information from offices, and as we have agreed that we will allow some latitude

with respect to which level of legislation we are dealing with, I think in that sense it would be appropriate to have the minister come in. She is clearly dealing with child welfare issues that were enunciated here today. So we can kill two birds with one stone, as was mentioned the other day, if that is all right with Mr McClelland. That is clearly my intent.

**Mr McClelland:** I understand that.

**The Vice-Chair:** Anyone else? No. I declare this meeting adjourned until 2 o'clock this afternoon.

The committee recessed at 1209.



## AFTERNOON SITTING

The committee resumed at 1408 in room 151.

**The Chair:** I call the meeting to order. I see a quorum present.

DAVID H. FLAHERTY

**The Chair:** I would like to welcome Mr Flaherty, a professor of history and law at the University of Western Ontario. Thank you for coming today. You have about 15 minutes to make your presentation, at which time there will be about another 15 minutes of questions to be asked by the members of the committee.

**Dr Flaherty:** I appreciate the opportunity to briefly summarize the testimony that I submitted to you in writing.

Je veux aussi vous assurer que même si je parle anglais, je serais très content d'avoir des commentaires et des questions sur n'importe quelles questions en français pendant les discussions.

Given my interest in privacy, data protection and freedom of information, I am especially pleased to have an opportunity to participate at the beginning of your hearings to review the operations of the Freedom of Information and Protection of Privacy Act.

First, a caveat, since I am an academic. I have not conducted empirical research on how the Ontario legislation has been functioning of the sort that I have done at the federal level in Canada and in other countries. Thus I am unable to identify specific problems that I think your committee should address, although I am quite prepared to answer any kinds of questions to the best of my ability that you wish to pose on the general mandate you have under both freedom of information and privacy. In fact, my general sense of the Ontario law is that it is very progressive in international comparative terms but that it will need some additional time to become even more effective. The concept of an open society in particular is both so important and so novel that it will require a new generation of public servants in Ontario trained in openness to create the appropriate climate for implementation.

I would like to do several things in my testimony: first, set forth my view that we are living in surveillance societies; second, remind you that there is no meaningful data protection for the private sector in Ontario, and third, explain why the European Community's draft directive on data protection of July 1990 poses certain problems for the private sector in Ontario and Canada that are not receiving any attention. I conclude that a central issue facing your committee is what to do about data protection for the provincially regulated private sector in Ontario.

My fundamental argument, which is presented in my book called *Protecting Privacy in Surveillance Societies*—and I have given a copy to the Chair; any of you who are insomniacs might enjoy it—is that Ontario increasingly risks becoming a surveillance society, one in which data banks are watching us, not always for good purposes, so long as it does not mandate some type of data protection for the private sector.

The private sector in North America is the exception in the western world in terms of lack of government regulation of its practices with respect to the collection and use of personal information. In the past, it has been possible to argue that English-speaking countries did not follow such European models of data protection, but developments in the United Kingdom in particular limit the salience of this argument. Although there is no need, in my view, for a European-style registration system for the private sector in Ontario, the British initiative in creating a data registrar under its Data Protection Act of 1984 increases the international pressure on Canada, Ontario and the United States to develop an oversight mechanism for ensuring more effective controls on private sector surveillance.

Current initiatives on data protection of the United Nations and the European Economic Community, which I discuss below, point in the same direction. I actually never discuss the United Nations initiative, but the European Community one is more relevant.

I would like to take you back just briefly to what are called the Organization for Economic Co-operation and Development guidelines on the protection of personal information, which Canada committed itself to on 29 June 1984. They are called the Guidelines on the Protection of Privacy and Transborder Flows of Personal Data. Canada accepted the obligation, among others, "to encourage private sector corporations to develop and implement voluntary privacy protection codes."

Although there now exists a joint federal-provincial task force on implementation of these OECD guidelines, it would be fair to say that concrete evidence of private sector compliance through the adoption of privacy codes is remarkably absent. A few well-known exceptions, such as the recently released model privacy code of the Canadian Bankers' Association, proves the rule.

In a 1987 federal report called *Open and Shut: Enhancing the Right to Know and the Right to Privacy*, which I understand you have received copies of, the House of Commons standing committee on justice and the Solicitor General, after its review of the Access to Information Act and the Privacy Act—the same sort of thing you are doing, at the federal level, and I was involved as a consultant in that process—recommended that the federal Privacy Act should be extended to the federally regulated private sector but without adopting the licensing and registration schemes characteristic of a number of European countries. The model was the moderate type of private sector controls incorporated in the West German federal law on data protection in 1977. That is obviously now the German law. That law has also been just updated, but I really do not know what it did to strengthen data protection in the German private sector.

An important additional reason for action in this matter was the release on 17 July 1990 of the European Community's draft proposal for a directive by the Council of the European Communities concerning the protection of individuals in relation to the processing of personal data. This document—and I have given a copy of it to your



Chair—has raised the stakes dramatically for private sector data protection, and I think that is one of the reasons why this committee has to think about this issue.

In essence, the EC initiative in its current version selects the best, and some would say the worst—ie, the most bureaucratic—aspects of extant data protection laws in the seven of 12 European Community member countries that have such legislation and then recommends that this collation should apply to the entire European Community, including manual and automated data and the public and private sectors. The goal is to have an equivalent level of data protection in place for all the EC member country states by 1 January 1993.

The EC directive is especially bureaucratic and strict with respect to the private sector. It recommends a registration scheme for most personal information systems, notification to data subjects of the disclosure of data to third parties, an emphasis on informed consent for data collection, a process to facilitate the removal of individual data from files used for marketing and direct mail advertising and various remedies and sanctions against data custodians for non-compliance.

I realize that is a mouthful of information, but those basic rules are in the privacy act side of the Ontario legislation, except for the registration scheme, which I would be happy to explain to you, if you wish.

The EC draft directive determines that personal data can only be transferred by an EC member country to a third country, such as Ontario or Canada, if that country ensures an adequate level of data protection. Otherwise, a specific data export can only take place on the basis of an agreed derogation—their term—if neither other EC member states nor the European Commission objects.

What has essentially happened in Europe, where data protection is regarded—data protection, privacy protection. Privacy protection covers a whole multitude of sins; data protection covers the collection and use of personal information. The Ontario act is called a privacy act. It is not really a privacy act, it is a data protection act. The British call their privacy act a data protection act. It at least takes sense. Think of all the privacy problems such as “a right to an abortion” that are not covered by the Ontario privacy act and you see one of the differences.

In Europe, data protection is regarded as an important societal objective, partly because of the Nazi past, and what has happened there is that both legislators and data protectors have realized that their own data protection for the private sector needs to be strengthened. Plus they now understand, with more than slight astonishment, that the private sector in Canada and the United States is, by their standards, essentially unregulated. The only kind of regulation we have is in the credit information field; consumer protection laws I think is what it is called in Ontario. The European data protectors view the current situation as an excellent opportunity to put pressure on Canada and the United States for improved data protection.

This whole initiative from the EC has made smoke come out of the ears of American multinationals. They see it as a big trade issue and it is quite entertaining to watch what has been happening, because they do not have any-

where near the quality of privacy protection in place at the public sector level that we have in Canada. I discuss that in my book, which is a comparative book dealing with France, West Germany, Sweden, Canada and the United States.

What may the European Community directive mean for Canadian and Ontario companies? I have just been talking about data protection as a human rights activity. If it does not appeal to you on that score, it is also a trade issue, it is also a competitiveness issue, because subsidiary companies operating in Europe will be subject to the data protection regime set up under the directive. In particular, subsidiaries operating in Europe will have to comply with the requirements of the directive when transmitting personal data to their parent companies in Canada. Finally, any Canadian company seeking to obtain personal data from a trading partner or any other source in Europe will be subject to controls on transborder data flows.

I continue to promote a process of self-regulation for the private sector in North America. The Canadian Bankers' Association code is a good example, and a number of other major Canadian companies that are federally regulated, plus a world-class credit information company, are about to announce important privacy initiatives in the form of privacy codes. But with my sort of modest enthusiasm for self-regulation, I am no longer sure that such an approach is adequate in terms of other international developments in data protection that I have mentioned. At the very least, I believe that the Ontario government has to push the provincially regulated private sector in this province to do more to self-regulate, because it has been 10 years since the OECD guidelines were first promulgated in 1981. I would suggest to you that it is very, very difficult to find a provincially regulated company, especially in a privacy-intensive industry, that has a privacy code in place. On the other hand, Quebec's Ministry of Justice, which I admit has a lot on its plate these days, has been and is directing attention to data protection problems in the private sector. Their Ministry of Justice is currently planning hearings on data protection problems in the private sector.

I obviously believe that this review committee should seriously consider action with respect to the extension of selected portions of the Ontario privacy act to the provincially regulated private sector, especially for such privacy-intensive sectors as consumer credit, insurance, employment, mailing lists, direct marketing, video rental records, CD-ROM consumer products and matters of that sort.

I would be happy to elaborate on these matters at your convenience. Thank you for the opportunity to testify.

**The Chair:** Thank you very much. Since we have a number of witnesses appearing this afternoon, our time frame for questioning is a little tighter this afternoon. So each party has approximately six minutes in which to ask some questions.

**Mr Owens:** You are so generous, Mr Chairman.

**The Chair:** I believe we start with the third party this afternoon.



1420

**M. Morin :** Est-ce que je pourrais vous poser une question au sujet de l'accès à l'information pour ce qui a trait aux entreprises privées ?

We heard yesterday—or was it the day before yesterday—from Ken Rubin, who was obviously quite adamant and wanted access to all the private sector. What is your feeling vis-à-vis that?

**Dr Flaherty:** He was talking about access to personal—

**Mr Morin:** Access to information. For instance, he was referring to the SkyDome, that you should have access to the directors and obtain all the information as to why they have financial difficulties. They want to have the names of all the financial contributors in the Ottawa Senators, for instance. Of course, he was turned down. What are your feelings vis-à-vis that?

**Dr Flaherty:** I much admire Mr Rubin because he has been the person who has made the greatest effort to make this openness legislation work at the federal and provincial levels and he has run into considerable roadblocks. I think on balance, despite being a privacy advocate, that the values of an open society are paramount, that we should be promoting openness, especially when the spending of government money is involved, when it is somehow a crown corporation or not even an arm's-length extension to a provincial or federal government. We need more openness of that sort. We need to know more why decisions were made, and once decisions were made, we should have much more of that information in front of us. I think that is in the public interest, in the interests of legislators and so forth.

On the other hand, there are privacy interests at stake and it is very, very difficult often to draw the appropriate balance. It certainly does not help federally or provincially when you leave jobs open for six or nine months so that offices are lacking in leadership. There has not been a federal privacy commissioner since last July. As you well know, the Ontario office has been without formal leadership at the top since last March. That is not very effective in drawing the kind of delicate balance that has to be drawn in very specific situations. I have no open-sesame, bright line that I can give you that would automatically say, within the SkyDome context, exactly where you would draw the line between openness and the privacy interests of individuals. I would be a little bit sceptical that there would be much in the way of privacy interests of boards of directors with respect to general decisions that they have made that involve the spending of public money.

**Mr Villeneuve:** I find it interesting that near the end of your presentation you are suggesting self-regulation for private industry. I have no problems with that. Prior to freedom of information legislation, I, as a person elected to the assembly, had less difficulty obtaining information. Now I have to go through the hoops and barriers. Could you comment a little further? If we do leave self-regulation totally to the private sector, what do you envisage, based on possibly the experience that we now have under FOI in government?

**Dr Flaherty:** I must say, as someone who has been involved with these information policy issues for 25 or 26 years by an accident of my career, despite my obvious youth, I am shocked to see what sometimes happens when this legislation comes into place. All of this legislation was based on the presumption that existing disclosure mechanisms, unless they were appallingly bad, would not stop. It was always understood federally and provincially that whatever access to public information that existed, that was healthy, should continue. Unfortunately, it seems to be part of the legalization of our society that is taking place that we put these rules and regulations in place and it does give more power to the bureaucracy in ways that sometimes slow down progress. I think my explanation, as I have dealt with the media over the police not releasing names of victims and people accused and so forth, has been that in some ways, at the beginning of new legislation, everybody plays games.

Roy McMurtry, on behalf of the chiefs of police of Canada, argued when he was Attorney General of Ontario against the federal freedom of information act that the end of the world was at hand. Law enforcement in Canada would cease for ever. As much as I admire Mr McMurtry, because I am also a legal historian and he contributed greatly to the advancement of the history of law in Ontario, we had a disagreement about this. Within a couple of years under the federal freedom of information act, the RCMP was saying: "Everything is just fine. We are doing what we always did. We are obeying the rules." They are a paramilitary organization, so they knew how to implement rules. I think what we are finding in Ontario, with freedom of information in particular, is that some of these rules are being applied in a very obfuscated way to counter the thrust of the legislation, which is to promote openness.

One of the things I admire in the United States is that they have had an open society officially since 1966, when their Freedom of Information Act was first put into place. I can tell you that it is dangerous to do research there, because if you ask them about anything they give you a document; they are not as uptight with information as we tend to be federally and provincially in this country. I think they show the benefits of an open society. People say to me, "If you want to know something about many Canadian companies, you file a Freedom of Information Act request with the SEC in Washington." That is an example.

I also think we have to give the act some time. I hope it does not take a generation, because I will not be around when it is finished, but it takes a while to train people in the concept of openness. You can see the difficulty. We want to promote openness but we also want to have data protection, but that is a subsection. We should be able to have an open society and at the same time protect the privacy interests of individuals, even in the kind of difficult situation you heard about this morning.

**Mr Villeneuve:** Maybe you could also comment on what has happened at the federal level. We now have, I gather, two individuals, one to protect privileged information so-called and one for access to more information. Who wins in a situation like that?



**Dr Flaherty:** Fortunately, there has been very little conflict between the two parts of the same office. You can see the problem. When I testified on this legislation before this committee in 1986, I think I suggested that it was a schizophrenic job to be the Information and Privacy Commissioner. How is the same person going to balance in his or her mind the two competing interests? As I thought at the time, freedom of information is the most politically sensitive, so that is going to occupy the bulk of the office's time.

Federally, they have managed to stay out of each other's hair, they have managed to stay out of court against one another. In fact, under the federal Privacy Act, there has been no litigation under the term of John Grace, the seven-year term that ended in the spring of 1990. They never went to court once. They were able to operate in a non-legalistic fashion. If I have any preference in this matter, provincially or federally, it is to not turn these bureaucracies, like the commissioner's office—I am afraid that is what we have to call it—into mini-courts. They were always intended to be ombudspersons or ombudsmen. They were supposed to be facilitators. They were supposed to promote access and privacy, and I agree that it is a schizophrenic job. On the other hand, this committee was wise enough in 1986 to split the two assistant commissioners to privacy and freedom of information. In Ontario there has been no leader in place since last March, but they have obviously continued to function and they have been getting results. Whether the functioning has been adequate is for you to decide.

**Ms S. Murdock:** Actually, this is in relation to conversation we had before you made the presentation. This is based on the language used in the act predominantly. Do you think it is necessary that a commissioner, for instance, who has not been there since March, should be a lawyer?

**Dr Flaherty:** Absolutely not. I suppose I could be accused of bias. I have legal training, I am a law professor, but I am not a member of the bar.

**Ms S. Murdock:** Say this again? I am sorry.

**Dr Flaherty:** I was about to say that I do not believe that you have to be a lawyer. The federal privacy commissioner, who is now the information commissioner, is not a lawyer. He was a very effective privacy commissioner and I predict—he will love reading about this in Hansard, so send him a copy—he will be a very good information commissioner. He has the right style, a facilitative style, a mediatory style, an Ombudsman style. He likes to make deals and get results. I think that is how this job has to function.

So I do not believe it has to be a lawyer. It obviously has to be somebody who is sensitive to legalities, but I also have a belief—I teach the history of law, American and Canadian. I love the Charter of Rights and Freedoms. I like the fact that the Supreme Court of Canada has been developing the constitutional right to privacy under the Charter of Rights and Freedoms, but I am opposed to becoming as litigious and legalistic a society as one can demonstrate the United States has been since the 18th century. I think the commissioner's job is to be an advocate, to be a

promoter of openness, to be an educator, a facilitator. That may be a lawyer; it may not be a lawyer. Often lawyers have skills in that particular direction, says he, deferring to lawyers on my right over here.

**Ms S. Murdock:** In the same vein, in terms of the language of the act, I know that as a constituency assistant, before this new position I am in, we had some occasion where our constituents had to make use of the act and had great difficulty in understanding it. Has your experience with our act been, in terms of the language used, that it is too legalistic or too complicated for the general public?

**Dr Flaherty:** One of the great things about having this review committee is that all of you at least will have to read the act; I am sure you would have looked at it before. You particularly, having been an assistant in a constituency, have a sympathy with what happens to the public if they pick up a document like this. If you have some legal training, it is difficult enough to understand.

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Let me say that generally speaking, the freedom of information act, which is supposed to promote openness, largely tells you what you cannot get. The privacy act, which is supposed to protect personal information, largely tells you how the government can give out personal information about you despite your inclinations. And it is all very complicated.

I said to you in private conversation that at least in Ontario, the only jurisdiction in the world, all of it is in one piece of legislation. That is the great Canadian contribution to privacy and freedom of information, to put it in one law, so at least you are not looking in two different places for it. But it is still very complicated, and I think the exemptions on both sides are much too large, much too protective. There probably should be injury tests in connection with most of these exemptions.

That is why I think many of the arguments and specific suggestions in the Open and Shut report—which I helped to write; I admit that, and I have an obvious bias in favour of it—will be of considerable interest to the members of this committee as you consider how to enhance and improve the Ontario legislation, which, I admit, is pretty darn good.

**Ms S. Murdock:** Would one of your recommendations be that we should, in our recommendations, include another mechanism for review at a later date?

**Dr Flaherty:** You mean judicial review?

**Ms S. Murdock:** A review somewhat like what we are doing here.

**Dr Flaherty:** Oh, yes. In the Open and Shut report—some would argue it is because I would like continued employment as a consultant—we recommended that there be another three-year review. The fact of the matter is that that was one of our recommendations that the federal government did not pick up on. I said to you privately, "I think it's very important that this committee really do its job carefully because it's unlikely there will ever be another three-year review." You know how difficult it is to get the attention of the busy Legislature to something as complicated and technical as this piece of legislation.



**Ms S. Murdock:** Would you feel it would have to be three years, or could it be longer?

**Dr Flaherty:** If you can get a five-year review on it, that would be terrific, because of the fact that it is going to take a long time to make this legislation meaningful.

**Ms S. Murdock:** One of the recommendations the commissioner's office made to us on the first day was that the commissioner should be appointed for seven years. What would your feeling be in terms of a review every seven years?

**Dr Flaherty:** That would be healthy. The problem is to get time in a busy legislative schedule for something as specialized as this piece of legislation. A mechanism that will facilitate that is, I think, very useful.

**Mr Owens:** With respect to your presentation on page 6, regarding the regulation of consumer credit, insurance, employment, etc, I heartily agree. We have had some conversation about that earlier in the week. It is of concern to myself and, I am sure, a lot of other people living in this province, about the depth of information that private companies are able to access about us as individuals, as well as the type of sharing that goes on between companies.

While we may freely give our name, address and phone number to ABC company, the next thing you know it is being shared with several other companies. I agree that we need to look at regulation in the private industry.

Just one last comment, with respect to review of the legislation. I feel that legislation of this type is evolutionary and should not be allowed to sit and not grow and change as the society it governs changes. I think it would be clearly within the mandate of this committee to recommend an ongoing review process to facilitate that growth and change as society changes.

**Dr Flaherty:** Could I just respond briefly to that? I would like to make the privacy issue real for you by asking you how you would feel about the local newspaper in your constituency running a story about what your recent rentals had been at the video store. You might think that was just very entertaining; your constituents might enjoy some of your tastes, peculiar or otherwise, in video rentals. But the fact is that there would be absolutely no reason in the world, as Judge Bork found in his Supreme Court hearings in 1987 in Washington, nothing to stop them from taking their lists of what you have been doing at the video store and using it. That is just an unsatisfactory situation. So in addition to your major preoccupation, which is likely to be freedom of information, you should not forget the privacy interests in the private sector. A lot of that is good house-keeping. You can do most of those privacy codes on the back of an envelope, and I think I have suggested to you in my longer testimony how that can be done.

**The Chair:** Thank you very much for coming along this afternoon, Mr Flaherty. We look forward to your other comments.

**Mrs Marland:** As our next presenter comes to the table, and I notice Mr Dear is speaking on behalf of the Metropolitan Toronto Police Force, I notice that we have now received a submission from the Sault Ste Marie police service over the signature of Kirk Kinghorn, who is an

inspector of the services division. He has sent a covering letter with their brief; the chief of the Sault Ste Marie police service is Barry King. I assume that written submissions coming to the committee are going to be part of our research officer's summary. Actually, this particular one is very succinct and very easy to read, which is something I know Chief Barry King would be responsible for. But if we have a lot of written briefs, with our sitting schedule, if we are not personally able to get through them all, we can look forward to some kind of summary from Mr Pond. Is that correct?

**The Chair:** That is my understanding, that these become part of evidence and that there is a summary done at the end.

**Mrs Marland:** Thank you very much.

#### METROPOLITAN TORONTO POLICE FORCE

**The Chair:** Will the next witness come forward, please? Thank you for being here today. Maybe you could state your name and your position and who you represent today. You have 40 minutes for this presentation, so you have up to 20 minutes to make your presentation.

**Mr Desjardins:** Thank you, Mr Chairman. I am Staff Sergeant Ray Desjardins, and I am a member of the Metropolitan Toronto Police Force. More to the point, I guess, for this committee meeting, I am the freedom of information co-ordinator for the Metropolitan Toronto Police Force.

I have not got a presentation to make, though. The chief was apparently asked to attend the committee to be available to answer questions. The chief is tied up in the United States in a conference right now. My immediate superior, Mr Dear, has another meeting at the Attorney General's at this same time. That leaves myself to answer any questions.

**The Chair:** Thank you, Sergeant. I think the normal rotation this time is with the second party.

**Mrs Marland:** Staff Sergeant Desjardins, you actually drew the short straw today.

**Mr Desjardins:** Yes, you could put it that way.

**Mrs Marland:** I am quite sure you would not hold the position of co-ordinator if you were not fully competent and capable. I would guess you are probably far more familiar with the complexity of this legislation than we are.

You are probably aware of this too; you may even have seen some of the rerun of the committee hearings. Earlier this week we did have the presence of the top cop for Ontario, Solicitor General Mike Farnan, I think it was Tuesday afternoon for an hour. At that time Mr Farnan told us that the experience of the Ontario Provincial Police with this new legislation for the past three years was quite—I am only paraphrasing his comments, but he kept reusing the same word. What was the word? He was talking about the fact that everything was going very smoothly and that for three years with the OPP—

**Mr McClelland:** A comfort zone.

**Mrs Marland:** A comfort zone, thank you. He said it had all been within a comfort zone, and for those first three



years there had not been very serious or severe problems with the legislation.

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When I asked him if he were going to be establishing guidelines to deal with municipal police forces and their regard for the legislation, he said no, he was not going to give guidelines at this time, although four or five weeks ago he did say he would give guidelines. But he has changed his mind and he wants to sit back and monitor the situation. He said it was a matter of judgement on behalf of police forces across the province, and he wanted to listen to the Ontario Association of Chiefs of Police, but he felt it was up to the police forces to use their judgement in interpretation. I think I am being fair to what his comments were.

What I asked him was that when it comes down to the final crunch of what interpretation means in law—unfortunately, sometimes, that interpretation is always left to the courts, and that is with any statute. In light of the decision that had been made this week by the three Supreme Court judges in relation to the right of a female resident of Toronto to sue the Metropolitan Toronto Police Force as a result of a violent personal crime against her, a violent rape, in that case the question was: If the whole information surrounding what was going on in her community at that time had not been kept private, she may have been in a position, as would any other female who lived in that Church-Wellesley community, to take extraordinary precautions to protect herself.

From what I have read, that young woman was not asking through her lawyer that victims' names be released. I can only read what her lawyer had said, because she is known as Jane Doe and is commenting only through her lawyer.

I am looking at it from the perspective of anyone in any community in Ontario who might be at risk because of a particular type of crime taking place. It could be a child molester, where children are at risk, it may be a rapist, where women are at risk, or it may be someone else who is committing violent crimes against any gender or any age. Where that is the case, there is obviously, under this legislation, a balance between how much information is released and at what point the perpetrator of that crime, until he has been proven guilty in court, is protected behind the right to privacy.

From the difficulty the municipal police forces have faced in the past month—there again, we only know what we read and what we hear through interviews—I know this is a very complex subject. Can I ask you as the co-ordinator for your police force whether your police force is now in a position, after four months of the new act, where you now have a policy that you have established, whereby a community would be informed of a risk to human life or safety, without releasing the victims' names, yet the public's right to know, in the compelling public interest of safety and security?

**Mr Desjardins:** The short answer is no, the force does not have a policy in place such as you mention or you envision. The problem here is that the act addresses the

protection of individual privacy and the others of the two main thrusts. The other thrust is the access to recorded government information, which is what my unit deals with. The operational context that you are talking about, I think, is a situation whereby an investigation is ongoing. It is up to the officer in charge of the investigation or his superior in that area of the force as to whether, for instance, notice is warranted to people who might be targets or subjects of risk.

The incident that you are commenting on, of course, I know essentially what you know by reading the newspapers, but in an over 7,000-person organization, I do not really have details of that investigation over and above what I read in the paper. Our office has not been approached, nor have we initiated a type of situation that you are talking about.

For example, if someone were to make an access request to our unit, the freedom of information unit, in regard to the particulars of a certain investigation, it would almost certainly be exempted under the provisions of the act because it is an ongoing investigation. So there is an exemption that protects an ongoing investigation for obvious reasons: something is being investigated, the officers want to pursue the matter with a view to laying charges, to proceeding in court, and to release a lot of information would, of course, prejudice that goal.

The situation in question is a very contentious one and a controversial one of the young lady, and again, I am simply repeating myself, all I know is what I read in the papers.

**Mrs Marland:** Staff sergeant, I do not expect you to know the details of that case. I know the population of Metropolitan Toronto and therefore the population that your force is responsible for. Also that was a crime of violence that took place five years ago and it was prior to this new legislation even three years ago. But I use it as an example because here we had five rapes within a tight geographic area of a downtown city core and also within less than 12 months, I understand.

Are you saying that at the moment there is not a policy—it is so hard to put this without putting you on the spot. Let me ask it another way. You are saying that where there is an ongoing investigation, because of this act there is an exemption to releasing that information because an investigation is ongoing, and therefore the perpetrator or perpetrators, plural, are protected and by necessity they are protected because obviously they are innocent until proved guilty.

**Mr Desjardins:** No, what I am talking about right now is protecting the investigative process.

**Mrs Marland:** Yes, I understand that.

**Mr Desjardins:** You see it is a question of the operational units, for example, the homicide unit, the fraud squad, the holdup squad. These are specialized areas of expertise. For example, in my 20 years on the force, I have never been in homicide and I have never been in the fraud squad, so I do not have that much expertise in these areas.

In a big city the size of Metro, we have a lot of people who are experts in that area as well as generalists. So it



would be presumptuous of me, for example, to approach the investigating team relative to the incident you are mentioning and say, "Well, why did you not give this out?" I hope they have their reasons. I would assume they do have their reasons. The courts may judge otherwise.

**Mrs Marland:** But I am certainly not talking about fraud. I am talking about where a neighbourhood or a community is at risk because of violent crimes being committed. I gave the example of rapes or child molesters. Would it really be contrary to the act if, in the compelling public interest—I mean there are rights of the public to know that they are at risk. Is that a difficult balance for the police? Does telling me that there have been attacks in Queen's Park, for example, put the ongoing investigation at risk? Where is the balance between putting at risk the ongoing investigation and having more crimes and therefore more investigations to follow?

**Mr Desjardins:** No, that would be a judgement call, and that would be a judgement call exercised by the officers who are involved in a particular investigation; or if it is a case of a number of investigations around a common theme such as sexual assault, as you mentioned, their superior would be the one to sort of advise them whether the at-risk communities should be advised or warned as the case may be. It would be on case-by-case basis. I do not think it is amenable to a sort of blanket policy of "When this situation prevails, then this must be done," because each case is different.

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**Mrs Marland:** Okay. My final question would be, if it is not an individual judgement call on a crime in a specific area or multiple crimes, then why was there such a concern by the municipal police forces who are suddenly putting their hands in front of the TV cameras and saying: "We can't talk to you. Leave this scene"? Suddenly we saw, certainly on the television media and some comments in the print media, that after 1 January everybody—I am not going to say police forces were paranoid because, as I said yesterday, nobody has any higher regard for the police officers in this province and their administration than I do.

But suddenly, if they are put in a position where they might be sued under the Freedom of Information and Protection of Privacy Act, they have got to protect—if they are being pushed back to the wall by media who want this information in return to protect the public, who is behind that wall to say to them, "Look, you can give this much information, you can say it's Queen's Park, but it wasn't So-and-so as a potential criminal or potentially to be charged"? Who is behind the police forces? Is the Solicitor General behind you saying, "Don't be worried about being sued because we'll protect you from that risk, as a police officer, as an investigating officer?"

**Mr Desjardins:** If I understand the question, the Solicitor General, of course, is behind the police forces in the sense that he is responsible for policing Ontario. But if you mean is there somebody giving me, for example, as the co-ordinator of the freedom-of-information unit, advice on disseminating information throughout the force, the answer is no, other than I am a member of and have been a

member of since the middle of 1988 the Ontario Association of Chiefs of Police freedom of information committee, which comprises members of various forces. We have discussed common concerns and the way we are going to answer the requests and the action we will take, that sort of thing. It simply a matter of enforcing the act really.

Most of the publicity since 1 January is concerned with what we call our major news releases, releasing victim information, that sort of thing, and that is the case where we are simply following what the act says. We have had legal advice from the Metropolitan legal department, we have had legal advice from our own force lawyer, and my office has had some inputs from the two-and-a-half years' experience we have had in various committees with the Management Board of Cabinet, with the Information and Privacy Commissioner and with the OACP commission, and it was the opinion of my office that to continue to release all victim information the way we had in the past would be quite clearly counter to the act.

This is the advice we gave to the chief. It was a difficult situation for the chief. He had traditionally enjoyed a good relationship with the press, and in the end he looked at the legal advice he was given and said, "Well, we'll have to go with it", because it was thought that it would ill behoove a police force to deliberately disregard sections of the act which we knew told us to do things this way. I know that does not address your concern about the at-risk communities. I would like to think and I believe that is certainly an anomaly. The situation you are referring to receives a lot of publicity and I do not know whether the right moves or the wrong moves were made in that situation. I would like to think that the right moves were made but I guess the court case will tell us in the end.

**The Chair:** I know this is a very serious topic we are talking about here so I have allowed a little extra time. I have given the political parties about 16 to 17 minutes to ask questions. You have time for one quick question.

**Mr Villeneuve:** Okay, do you see a different comfort zone—and that was the buzzword that Solicitor General used—for a force like the OPP that is across the province, as compared to the largest municipal force that you happen to be a part of or a municipal force of two officers, which we have many of out in rural Ontario? Do you see a different comfort zone from the provincial policing unit to a large municipality to a very small police force in a small town?

**Mr Desjardins:** Yes, I think I do. That is probably a fact. People have said before, "Why has the situation suddenly cropped up in Metro when the OPP have been operating under it for these last three years?" Well, I think the situation that involves a high-publicity case is the exception to the rule, and it is mainly a rural police force for many of the rural and smaller communities in Ontario.

I think the issue simply did not arise because, for example, where a major crime, a major incident occurs in a small community, I think everybody from the mayor to the last citizen in the community knows who the accused is, what the crime is, who the witnesses were by the end of the day, so it is kind of superfluous perhaps for the news-



papers to try and get the information from the police the next day. In Toronto, which is the media centre of Ontario, the light is very hot and very bright, and I think our comfort zone, as you put it, is quite small.

**Mr Villeneuve:** As you know, we had a very major problem in what was referred to in previous questioning, in a small municipality in rural Ontario, and the hearings are still before the courts, but there was some degree of apprehension by local people. It was child molesting on a large scale, and the local people were somewhat unhappy that the investigating officers did not warn families that this was occurring on a relatively large scale until it all kind of came out in the wash. That is a difficult one, I know, but could you comment on it?

**Mr Desjardins:** Actually the Freedom of Information and Protection of Privacy Act does not really deal with that sort of situation, does not really sort of offer advice or say that we should do this or we should do that. It is kind of a passive thing, if you will. It says that if we receive requests for information, this is what we do. In this case we give it out, in this case we exempt part of it, or in the rare case all of it, because of a certain situation or things that prevail. But it does not say that police should take a proactive stance, so to speak, in terms of protecting the public.

I would think that would go without saying. You know, "To Serve and Protect" is our motto. In this situation and the one mentioned earlier, I would like to think the protection of the community is uppermost in our mind and I just do not know why these people were not—I do not know all the details so I do not like to comment on another police force or even another police officer's performance, but it would seem that protection of the public is paramount, yes.

**Mr Villeneuve:** Then, of course, the obvious one, it cannot interfere with the ongoing investigation that was occurring, because if you spill too much of what you know, then you have defeated the purpose. It is a fine line.

**Mr Desjardins:** Yes, but even then I would suggest that in certain cases, even if the investigation would go down the tubes, so to speak, if it was a case of protecting at-risk communities, then sometimes it might be—

**The Chair:** Thank you. Mr Owens.

**Mr Owens:** We seem to be revisiting the Solicitor General's testimony here today. One of the questions that I asked was with respect to the philosophy that the Solicitor General's department has with respect to the revealing of victims' names, and I guess I am asking you the same kind of a question. For as long as I have been able to read newspapers and listen to the news and whatever, they have always identified names and not street numbers and things like that, and I think our friends in the press have been relatively and reasonably judicious in their use of victims' names.

What type of philosophy is the Metro police force going to employ with respect to any kind of recommendations that it makes to the Solicitor General, that it makes to the Management Board of Cabinet around this issue? One of the stories that I referenced was one that was reported about the Victims of Violence, the group that talked about

crime statistics and people becoming faceless, and that we would be unable, for a lack of a better phrase, to reach out and touch people, to have that personal contact that, one, informs us of what is going on, and two, reassures us that we are still somehow human, that we can still empathize with victims. I am just wondering the type of philosophy that your department is going to approach with respect to that.

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**Mr Desjardins:** Well, I am not sure about the question of philosophy. We are, as the speaker before me mentioned, a paramilitary organization, and certainly the level below the chief, at my level and the level of most police officers, our function is to fulfil the mandate that we are given: to obey the law above all as well as enforce the law. It is simply a case of—and I want to stress that we are not doing this to make the Toronto Star unhappy, or any other group—we are simply doing this because the law says that in this situation victim information, in the absence of compelling reasons to the contrary, will not be given out, and in this situation it will be given out.

There were some teething problems. We initially changed over from one procedure to another at the end of the year, and the situation, the way the process works, it involves a police officer in the field determining if it meets the criteria for a major occurrence and telephoning down to a clerical person at headquarters who is merely a cipher, so to speak. The orders are printed out and they are delivered out to the duty desk, which we call the majors. This is where the press come and pick up the majors and I guess examine them and decide whether to do a story based on them or not.

It has been said that it is ambiguous, and in some cases it may well be. But quite clearly I think in a situation of releasing victim information where an ordinary crime, a very common crime, like a break and enter or an assault or someone's home being broken into and certain items stolen, the intent of the act is that person's personal information, which would personally identify him or her as an individual, will not be released to the public without his or her consent.

Something that we have to remember is that as long as they consent, that is fine, and we have told our officers when they take their occurrence reports at the scene to ask the victim, "Do you have any objections to this being released?" In most cases I gather they are saying no, because we are releasing very few of them.

You mentioned the situation of the faceless crime, and this is the situation that the newspapers seem to key on. They say that a story without an identifiable individual is not news. That is their point, and I can sympathize; I cannot empathize, but that is what they say. On the other hand, the law tells us that we have to do this. I do not think we are dragging our feet at all or being obstructionist. In fact, we have modified our procedures somewhat, to give them even more information than we first were.

For instance, now when there is a victim and an arrest has been made, then we will give out that victim's name, even though the arrested person will not be charged until



the next morning in court, on the understanding that it is going to be made available publicly the next day or two days later, if it is the case of someone being arrested late Friday night. Then we will give out the information because it will be made public on the Monday anyway.

We are doing that and, of course, we are not releasing the names of sexual assault victims or a child, because we traditionally have not. But that is a judgement call.

**Mr Owens:** Has your relationship with groups like Neighbourhood Watch changed in any way with respect to the types of information that you release to those folks, and can you tell the committee how it has changed?

**Mr Desjardins:** Yes. We have had to sort of advise the street officers who are involved with Neighbourhood Watch, when they take an occurrence, to ask the victims whether they have any problems with the information being released to the Neighbourhood Watch program and, if necessary, to explain what the program involves, that sort of thing. Ordinarily, for example, a break and entry that I mentioned, you would give the street, for example, if it was Boyd Avenue or something, you would say, "A bungalow was broken into on Boyd Avenue and stolen was a quantity of money, of coins," whatever, but you would not give the address. You would simply say a bungalow on Boyd Avenue in that situation.

It was pointed out to us in my unit, the freedom of information unit, by the people at Neighbourhood Watch, that they sometimes have programs—for example, if someone has had a lot of things stolen—to come to them and to assist them, whether it is sort of victim assistance programs to assist them with the stressful situation they have been through, or sometimes it is with elderly people, to help them physically, to go and make a meal for them or console them, that sort of thing. So we have told them when they take the occurrence, initially investigate the crime, to explain the Neighbourhood Watch program or the victim assistance program, if they have any problems with the information being released.

**Mr Owens:** My colleague Mrs Marland asked about a policy and a procedure and, I guess, some type of form or method of inventorying the type of problems you have. Are you folks being proactive in that way or are you waiting for the Solicitor General or Management Board of Cabinet to come out with directives as to how this process is to be handled?

**Mr Desjardins:** We are being sort of proactive, I guess, in the sense of external situations, and reactive internally in the force, because of course the act applies within the force too. But we have tried to sort of anticipate situations developing outside and address them before something happens, before someone's personal information is released, before something is done sort of counter to the act, maybe not willingly but against the letter of the act. Sometimes there are things we do not think of, but they become apparent and someone brings our attention to this issue and we deal with it, sometimes by a policy, sometimes by fine-tuning the present procedure.

**Mr Fletcher:** I just have one question—maybe it is a two-parter. The act itself, you work with the act. Personally,

how do you feel about it? If there are any changes you would like to see in the act, what would they be?

**Mr Desjardins:** Actually this committee, I understand, is dealing with the provincial Freedom of Information and Protection of Privacy Act, and I am working under the Municipal Freedom of Information and Protection of Privacy Act. But I think most would agree it is essentially a simple translation of the provincial act and no substantive differences.

You sort of caught me off guard. I am not used to someone asking me personally, as a police officer, how I feel.

**Mr Fletcher:** Sorry.

**Mr Owens:** Your boss is not here, so—

**Mrs Marland:** No, but he is going to watch it tonight.

**Mr Fletcher:** No, he is not.

**Mr Desjardins:** I think it strikes a good balance between access and privacy protection; I really do. One of the problems—I have been involved in this for two and a half years—one of the really common problems I am up against is traditional police practices and traditional police attitudes. I say that. I am a traditional policeman myself. I have been on the job 20 years. But we have sort of grown accustomed to someone saying, for example, "Can I have this police document or this police report?" and we say no, because one of our regulations is that the business of the force is confidential and force documents will only be released on the approval of the chief of police.

Basically, if you want a police document prior to 1 January—actually we have been easing into this in the last six months, but basically prior to the act—you would probably be told no, and if the person persisted and said, "Well, why can't I see it?" we would say, "It's a confidential police document." That is it, sort of discussion closed.

Often in fact the document or the information contained in the police report has been fairly innocuous. If one stands back and looks at it, one might be tempted to say, "Why not give it to them?" whereas the traditional attitude is: "This is a police report. We cannot give this out." I find that now, three years later, there is a lot of that kind of situation, where we are looking at documents now that historically we have not given out, but we say in effect: "Why not? What harm can accrue to the force? What investigation can be imperilled or what portion of the public can be put at risk by releasing this?"

Quite often it is none. It is just that traditionally we have not done it. So we are changing that a lot. I found that attitude has been very prevalent and it has been quite an education process we have been involved in intensively in the last year and a half.

As far as the access to information that is dealt with there and the protection of privacy is concerned, really I think it is something that people do not have a legal right to, but certainly I think they have a moral right to it.

1510

On the question Mr Owens was mentioning before about the faceless crime and the need of the press to publicize this, we have had instances where people have complained and written letters to the chief where they felt their privacy was compromised. There was an incident: A young lady



wrote a letter to the chief. It was last year—I do not have it with me but I could get it—where she was mugged. She was robbed in downtown Toronto. Her purse was stolen and her keys in the purse were taken as part of the robbery. The next day the press published the fact that she was mugged, her home address—she lived in an apartment building—and of course there are her keys in the purse with the attacker.

To make matters worse, a couple of days later her parents in Thunder Bay read the story. I am not sure whether it was the local press culling an article from the Toronto Star—I am sorry; I do not know it was the Toronto Star—culling an article from the press, or whether they had read the actual Toronto paper, but they phoned her up and they were all upset, “We told you what would happen when you went to the big city,” sort of thing.

I guess she felt, first of all, did they have to publish her address when her keys were in the purse and everything, making her subject possibly to a second attack, then publish the information needlessly upsetting her parents when the incident had been dealt with and had been in the past? So there are two sides to this issue of publishing information.

We are finding that a lot of people we come in contact with, if given the choice, would rather the information not be made public, even to the extent of something seemingly—I should not say “harmless” but as low-grade as a break and enter into a residence. It is terribly shattering to an individual if you have had your house broken into, but as far as the police are concerned it is not really a serious crime. They are very seldom violent people. But still, there are details in police reports of what was stolen. Maybe you collect a certain kind of china, or you collect coins, or maybe someone is a gun collector, and of course publishing that is a red flag, perhaps, to thieves who read it, or even just for the sake of the fact that they do not want certain details of the goods that were stolen made public.

I think someone should have a right to that, maybe just to fend off questioners at work the next day. If anyone has ever had a broken arm or a cast, you get tired of endlessly repeating what happened, even for something as simple as that. So I think there is a case to be made for protecting individuals’ privacy.

**The Chair:** Mr Owens, do you have a question? You have about five minutes left.

**Mr Owens:** Just a quick, almost humorous anecdote: I had spent an evening shift with two officers in Scarborough travelling in the back of the cruiser, so I wanted to write letters to thank them for their interest and the information that they provided for me. When I called up the main switchboard to get the address for 41 Division, I was told that I could not have it, that it was confidential and that I would have to write care of Chief McCormack at 2 College Street if I wanted to thank these folks, which I of course did. But with respect to your comments about traditional policing and confidentiality, I think you are correct that things have not changed in a big way.

**Mr Desjardins:** I think someone was being overzealous.

**Mrs Marland:** The address of the station?

**Mr Desjardins:** That is definitely not classified information, I can assure you.

**Mr McClelland:** You indicated that the municipal act is really for all intents and purposes a clone of the provincial act and even, I think, to use your own words “easing into this in the last six months.” You had legal advice from both the police force and also the city. You made your decision and acted accordingly. The Solicitor General, however, indicated early in January—his words more or less were to the effect that the police forces in Metro Toronto, Peel region and others were clearly misreading the act and misapplying it in terms of its intent, that its intent was in fact to facilitate the distribution of information.

The question that leads to is, what input, if any, were you given as you eased into the implementation of the act? As I raised this with the Solicitor General, I indicated that we had three years, if you will, to go to school—if I can use that expression—with the OPP and the implementation went relatively smoothly. What input, if any, were you given and what consultation, if any, was undertaken with the Solicitor General’s office as you moved towards 1 January of this year with the implementation of the legislation as it affected you?

**Mr Desjardins:** The Solicitor General’s office had representation on the Ontario Association of Chiefs of Police—this is a mouthful—freedom of information implementation and study group, which was the official name of the committee I have been associated with since July 1988. There was a representative on this committee, and there continues to be, from the Solicitor General’s office. As part of that committee we had meetings not only among ourselves, but we had meetings with the Management Board of Cabinet freedom of information section, which was associated with the drafting of the legislation itself. We had meetings sometimes with representatives of the Office of the Information and Privacy Commissioner as well. We had numerous meetings with, for instance, the Management Board of Cabinet and several meetings with the Information and Privacy Commissioner.

**Mr McClelland:** So there was input and obviously some interaction between the Solicitor General’s office and police forces across the province, it would seem.

**Mr Desjardins:** Certainly in possibly an indirect or a peripheral way in that the person who was a member of the Ontario Police Commission, as it then was, comes under the Solicitor General, so he was on the committee and he had input into the committee and presumably he would take details of the discussions back to his superiors.

**Mr McClelland:** There has been, I think it is fair to say, some change, certainly some period of adjustment over the initial few weeks of the implementation of the act with respect to municipal forces. It is not for you to comment whether you feel the Solicitor General should or should not have intervened more directly and more specifically with respect to the policy and the guidelines. Had he done so, do you feel that would have eliminated the transition period and some of the confusion, I might even say the obvious confusion and inconsistency from place to place across the province? Would that have helped?



**Mr Desjardins:** Of course you are not going to have me criticizing the Solicitor General.

**Mr McClelland:** I recognize that and I said it is not for you to judge whether he ought to have done that, but had he done that? I mean, that is his call. Ultimately, at the end of the day he makes the decision to have acted or not to have acted. Would that have served a purpose for you and eliminated some of the confusion at the outset?

**Mrs Marland:** You do not have to answer anything.

**Mr Desjardins:** One of the situations is the fact that I think the confusion was more apparent than real. I know it was much publicized in the press, but basically it was a situation, as I mentioned earlier, of sort of fine-tuning a new procedure on our part and the press being taken by surprise, I think.

We mentioned that at the committee hearings back in November 1989, the committee looking at the third reading of the bill. This committee I was talking about, of the OACP, made several recommendations and suggestions at that time. One of the things they said and clearly pointed out was the fact that the press was going to raise all sorts of alarms when it found out it was not getting all the information it traditionally had received.

**Mr McClelland:** I might add that the press said the very same thing the day, or two days after, the delegation appeared representing police forces. Sorry to interrupt. Both parties anticipated the problems.

**Mr Desjardins:** Yes, we anticipated the problems then and I was not aware of any sort of big push by the press, the press association or the press council to sort of have the bill modified. But in any case, what we dealt with was the act as it was written and we are simply dealing with the law as it was written. I do not feel there is any ambiguity as far as this situation with victims is concerned; I really do not. What we are doing is it is a situation, as I said before, that it is a straightforward crime, leaving aside the question of sexual assault or child molesting. The officer takes the report and says, "Do you have any objection to this information being made public to the press?" The victim presumably says yes or no. If they say no, then quite clearly the act forbids us to release that information.

**Mr McClelland:** You were not here yesterday or two days ago. The Solicitor General indicated that he was going to continue, rightfully so, the interaction and dialogue with the chiefs of police and so forth. He also indicated that new guidelines would be circulated, I believe, that day, which would have been two days ago, or indeed yesterday. Are you aware of any new guidelines or directives that have appeared on your desk or at the chief's desk with respect to the flow of information from police forces to members of the media?

1520

**Mr Desjardins:** I have not seen the document. I read these stories in the press this morning and I phoned around to various other FOI people. I am led to believe it is the document we worked on about 10 days ago in this committee, with the Management Board of Cabinet. If that is

the case, it is simply a synopsis of the six-page guidelines that came out at the beginning of December.

**Mr McClelland:** Am I correct in understanding then that your understanding is there is nothing really new or different for any further direction being offered in that documentation?

**Mr Desjardins:** I contacted the Management Board of Cabinet this morning and it identified the document that the press was referring to. Therefore, no, it is not new information. It is simply a distillation or a synopsis of the former report. But again, I have not actually seen the document, but that is what I am led to believe and I have no reason to think that this person would lie to me; put it that way.

**Mr McClelland:** I will say—not for comment; I do not expect you to respond—that it was my understanding the Solicitor General had indicated that he was going to, if you will, seize the issue and deal with it. I will not ask you to comment on that.

**The Chair:** I see no further questions. Thank you for coming along this afternoon. We are faring extremely well on some of the questions asked here this afternoon. Thank you, staff sergeant, for coming here this afternoon.

#### MINISTRY OF THE SOLICITOR GENERAL ONTARIO PROVINCIAL POLICE

**The Chair:** Could I ask the witnesses from the Ministry of the Solicitor General to please come forward? Thank you for coming this afternoon. You could state your name and the position you hold. You have about 20 minutes to make your presentation.

**Mr O'Grady:** My name is Thomas O'Grady. I am the commissioner of the Ontario Provincial Police.

**Ms McTavish:** I am Isabella McTavish. I am the freedom of information co-ordinator for the Ministry of the Solicitor General.

**Mr Guay:** I am Superintendent Robert Guay. I am director of media relations for the OPP.

**The Chair:** Thank you. You have about 20 minutes. I do not believe the next witnesses are appearing this afternoon, so if you feel you need a few extra minutes to make a presentation, please feel free.

**Mr O'Grady:** We did not come under the impression we would be making, nor did we come prepared to make, an initial presentation. What we did come prepared to do was to answer questions that might be put to us.

**The Chair:** I believe it is the government's turn to begin questioning this time. Who would like to begin? Mr Owens, do you have a question?

**Mr Owens:** Not at this time.

**Mrs Marland:** Mr Chairman, could you ask a question on behalf of the committee so that we do not lose our turn? Remember I did this so generously last week?

**The Chair:** Mrs Marland can ask her question.

**Mrs Marland:** I just think in fairness to Commissioner O'Grady that since we probably did not give direction to our deputations necessarily to come with any kind



of a brief to present, I wonder if, just to get started, the Chair might ask the commissioner, since he is with the OPP and it has been working with the legislation for three years—I am intentionally talking to the Chair—would he like to ask what its reaction has been to the legislation for these first three years.

**Mr H. O'Neil:** I would have asked that question.

**The Chair:** A question to the—I do not think there is any need to repeat it through the Chair.

**Mr O'Grady:** I guess I would reply in this way. Perhaps for the last 10 years we have been responding to the media in a manner and adopting a philosophy that is not unlike what is laid down for us in the provincial act. Because of that, I suppose, it is not surprising that when we were seized with the act, we carried on in a manner that we had been doing for some time. As a result of that, we did not experience any great difficulties from the point of view of concerns of victims or concerns of media.

**The Chair:** That takes care of that question. Margaret, do you have another question?

**Mrs Marland:** All right. Superintendent Guay, since your area is media relations, you are probably—

Interjection.

**Mrs Marland:** I love Gilles too.

Obviously, with that specific area, you are the one who has probably the most difficult challenge because it is through the media that the general public is saying, "Tell us about X, Y and Z because I need to know in order to protect myself and my family," in some circumstances. I do not know if you were here earlier when I was asking the question about—I think we all accept the fact that where there are ongoing investigations, there are all kinds of reasons why the public should not have to know some aspects of the crime, and possibly I would go as far as to say that there are a whole lot of examples that I can think of where I am not ever interested in knowing who the victim is by identification. I do not need to know that it is John Brown or Suzy Smith, but I feel personally very adamant about having to know where my constituents are at risk because of something that has happened in a community.

I do not have the OPP in my community, but I was a regional councillor when the OPP took over the policing of Caledon, which prior to that was policed by the best municipal police force in Ontario, or maybe even in Canada, which is Peel regional. But I say seriously to you, as the person dealing with media relations, have you seen a change in the job of media relations? Have you seen in the last three years with this legislation where your job is more difficult? Is the media being more demanding or less demanding? It is often the public who drive the media, because the media respond to what it is the public want to read. The media respond to what the public want to see on the 6 o'clock news on television, so I do not always feel that the media are the bad guys in all of these discussions. I mean, people are inclined to say that the media turn the wheels. I think that if the public did not want to read that on the front page of X paper, the print media would not bother printing it and if the viewing audiences dropped the 6 o'clock news on certain stations in reaction to certain

styles of television news reporting, they would change that style. I really think in the final analysis that it is we, the public, who drive the media.

You have a very difficult responsibility because you certainly have a responsibility to the security and safety of the people who live in those areas under your jurisdiction of policing and you have a responsibility to victims of crime. I am just wondering whether any of those things have changed, bearing in mind that I just heard Commissioner O'Grady say that the last three years have not really made a lot of difference from the practices of the OPP prior to that. But outside of the force, is my question, have you experienced change?

**Mr Guay:** No, we have not experienced a lot of change. As the commissioner mentioned, our guidelines have been in place and they closely parallel the intent of the provincial act. We have worked very closely with the media and our own branch was developed so that we could facilitate the movement of information to and from the media by working closely with the media. The media have been very helpful, and so has the public been very helpful in these dealings. We do believe it is a two-way street and it is our philosophy, of course, to share the information that we have with the media, so that by the media having it, then the public is aware of what we are doing and how we are doing it. It varies, of course, from case to case, but there has been no significant impact on us. There are the odd times when the media contact me directly.

1530

I should explain first that as director of media relations, not all calls come to me and that we have in our province 16 districts across the province. In each district we have a co-ordinator who looks after public information, among other things, and then from that we have members in most detachments. We have something like 185 detachments across the province and I think we have—it varies—now about 135 public information officers out there who deal directly with the media in each town or detachment area. So the media do not have to deal directly with me but, as the director, I maintain the policy of the force and oversee the dissemination of that information.

It has been the custom, as I mentioned, to pass on this information to the media and so on, and to the public, so we have had relatively little trouble with this. The media has been very co-operative with us through the years and even now, on occasion, I get a phone call. Mainly it is not a difficult problem. Sometimes it has more to do with the timely release of the information in that sometimes the media people in the area do not realize why the information cannot be released at that particular time. It is just a matter of my contacting the local person in charge of that particular area and finding out what the problem is and it is easily cleared up. Sometimes there is a reason pertaining to an investigation or, on occasion, the privacy of the individual comes into effect. But by and large, we pass out the information that we can with the exceptions of, painting with a broad brush here, the victims of incest, sexual assault and robberies, people who can be revictimized, that



type of thing. On an ongoing basis, we have a fairly free flow of information from us to the media.

**Mrs Marland:** Do you ever have a situation where there have been witnesses to a crime and the media are there and those witnesses to the crime are giving information to the media, which for the protection of your investigation you would rather they were not doing, and then afterwards you have to go to the media and ask them to withhold some of the information that they may have received voluntarily from a witness?

**Mr Guay:** I personally have not had to do that, but I know that on occasion it has happened that witnesses have told media what they saw. I cannot speak for others; I have only heard that the media has been asked to co-operate and they have done so on some occasions.

**Mrs Marland:** So that is not a problem. What you are saying, virtually, is that as far as the Ontario Provincial Police is concerned, you have not really experienced any difficulties as a result of the new legislation in the balancing between the protection and the public's right to know.

**Mr Guay:** Well, we of course look at a lot of individual cases as well as the broad picture, but we try to balance the need for the public to know with the right of privacy for the victim. It has worked fairly well so far. We have had no complaints from either side, either the public at large or the media.

**Mrs Marland:** Maybe I could ask Ms McTavish, are there ongoing, regular meetings between the parties to this act, such as representation from the police force, victims' services, victims' rights groups and the media?

**Ms McTavish:** As Staff Sergeant Desjardins was saying, the Ontario Association of Chiefs of Police has a sub-committee that has been looking into freedom of information, and certainly my office has had representation on that committee, as has policing services division of the ministry. They have had input into that process. As well, I have sat on the committee that Management Board secretariat developed in order to develop the initial guidelines and as part of that process, Management Board secretariat did consult victims' groups, the media, women's groups, and it also discussed the issue with the Ontario women's directorate.

**Mrs Marland:** And what are you hearing, for example, from the media groups?

**Ms McTavish:** I was not involved directly with those discussions. Management Board secretariat undertook those discussions because it is responsible for the legislation and it undertook the consultation directly with those agencies and groups representing the media.

**Mrs Marland:** So you do not know—

**Ms McTavish:** I have had phone calls from the media, and they have expressed concerns and some confusion around what was going on initially when the municipal legislation came into effect on 1 January.

**Mrs Marland:** The Solicitor General's office is responsible for all police forces, so I guess it is the responsibility of the Solicitor General to make sure that the best possible legislation works for the greatest number of peo-

ple in the most equitable way. I think that is the bottom line of what we are trying to deal with here.

I do not see any one party having a right to this legislation, either under access to information or rights to privacy. I do not see any one party having a greater investment in any aspect of this legislation than another, because I think the parties to it all have different interests and therefore they have different rights—the community at large, the victims themselves, the police forces that are trying to do a job to make sure that the public is protected in that particular crime or that the particular criminal does not have that opportunity to do the same thing again. And then we come around to where the public has a right to know, and what is it that they have a right to know?

Were you surprised, Commissioner O'Grady, that there was so much concern expressed in the past months by some municipal police chiefs and certainly quite a lot of media? Did that reaction surprise you when you had been working with it for three years?

**Mr O'Grady:** To some extent it did, simply because I only had our own involvement for the last three years with a similar act to go on. And since we had had essentially no difficulty with it, then indeed, I guess I was slightly surprised. But I think I should make it clear that to go further than that, it would be inappropriate for me because I really am not familiar with the circumstances that my colleagues have to deal with in various urban areas. It is difficult for me to make a comparison when I only know the one side, and so I guess I only repeat that we had no difficulty.

1540

**Mrs Marland:** Is that the very point, that the police forces that have had the difficulties and, in fairness, the media groups that have had the difficulties are in areas where the instance of crime is greater perhaps, the type of crime in some cases, the frequency—well, certainly the frequency is greater because of the density of the population and everything else that contributes to inner-city problems—that the OPP never has to deal with those inner-city problems in the smaller communities that it is responsible for? I mean, the OPP does a different type of policing.

I am not saying that you do not have terrible, terrible, heinous crimes that come under your jurisdiction in some municipalities for which you are responsible, but the incidence and the public involvement in those kinds of crimes have to be accentuated by the pure volume of population.

**Mr O'Grady:** I think I can fairly say that obviously we do not police the very, very large urban communities and therefore we do not face all the issues that relate to those communities. I should add of course that when they are high-profile crimes that you have mentioned in which we are involved, then we could expect the media from those urban areas to show an interest.

**Mrs Marland:** Yes.

**Mr O'Grady:** And therefore we have dealt and do deal on a regular basis with all the major media areas when they have a particular interest in things we are doing. In those dealings, we have not had any significant difficulties either.

**Mrs Marland:** Thank you.



**The Chair:** Ms Murdock, do you want to ask some questions?

**Ms S. Murdock:** Actually, I just have a quick question and it is on processes.

In terms of your detachments and your districts, who handles any kind of query under the Freedom of Information and Protection of Privacy Act? Which one is it? What level is it? Is it detachment or is it district level or is it the Toronto office or is it your department in the Solicitor General's office?

I am not just talking about a media request. I am talking about suppose I want to know how many pencils the OPP uses, whatever the question may be. If I wanted to find out that information, would I do it at a district level? Would I do it at a detachment level? What is the bureaucracy you have to deal with?

**Mr O'Grady:** I think again it would depend on the circumstance, but if it is an inquiry under the Freedom of Information and Protection of Privacy Act and it obviously relates to that, then it would be referred to the freedom of information co-ordinator, and therefore Ms McTavish might be able to pick up on my answer from there.

**Ms McTavish:** Okay. What happens is that anyone can make a request, of course, under the act. If they are at a detachment they can obtain a freedom of information request form and they can fill out that form—that form would be sent to my office—or they can just put something on any piece of paper invoking the act in requesting information. That again would be sent to my office. Or they can write directly to my office and request access to OPP information and the freedom of information office would then handle the request from there.

I should also point out that we are separate from the OPP; we are part of the ministry. Although I do have police officers on staff to assist me on law enforcement issues, we are completely separate from the OPP.

**Ms S. Murdock:** You would handle all the OPP requests.

**Ms McTavish:** Yes, fire marshal, etc.

**Ms S. Murdock:** Then in terms of numbers? This is across the province.

**Ms McTavish:** For the Solicitor General's ministry?

**Ms S. Murdock:** No, just the OPP.

**Ms McTavish:** Last year we received about, let's say, 300 requests and approximately 90% are OPP related. So I am sorry—

**Ms S. Murdock:** No, that is fine. But in terms of the 90% OPP-related, are they all having to do with the kinds of questions that have been asked thus far in terms of media relations, criminal acts, or have they been statistical data kinds of things?

**Ms McTavish:** The types of requests that we get, and I do not have stats on how they break down, but for example unsuccessful applicants to the OPP will write in wishing access to their applicant file; police officers who have had complaints, OPP officers who have had complaints against themselves by members of the public will write in wanting access to those complaints files; legal firms or insurance

companies will write in wanting access to accident information or fire information; there are some requests from the media for access to investigative files; members of families request access to OPP or fire marshal's investigative reports pertaining to accidents or deaths of family members; there are requests from students for school projects, people doing historical research—these are getting down into the lesser ones now. It is a variety.

**Ms S. Murdock:** So in actual fact it is only in the last month or so that there have been any major difficulties or the perception by us watching on television that there is a problem with the release of information. Would that be since the 1 January 1991 date? Or is it that over your past 10 years of experience with release of information that there really has not been that much problem? I mean, 300 requests a year is not very many, actually, I do not think, with an operation your size.

**Ms McTavish:** Yes. It is increasing steadily and it is a large work load. It does not sound like a lot but it is a large work load, but that is not at issue.

It has really been in the last month that this whole issue of the oral requests and that type of release of information to the media has come up. As has been indicated, there has not been a problem in the last three years, since the legislation came into effect, there has not been a problem.

**Ms S. Murdock:** If you could do anything to change the freedom of information act today, what would you suggest? I am asking you; you are the head person.

**Mr O'Grady:** As I indicated earlier, I am quite content with it. As a police service, we have not experienced any problem with it, nor have we been required to change our general philosophy that we have adopted, certainly over the past 10 years. Essentially, it is business as usual. There is no inclination on my part to suggest any changes.

**Ms S. Murdock:** I know this has nothing to do with you now, but as it is another police force, one of the recommendations in the Sault Ste Marie written submission to us is that if you get a request from the same requester on the same file continuously and repetitively, that instead of having to release the entire file each time, you only release the updated portion of the file. If the last time you sent out information on an information request was last June, then if you get another request in January you would only send from June to January. That is another process thing—

**Ms McTavish:** That is an option you should be able to negotiate with the requester, unless they are being really sticky.

**Ms S. Murdock:** And that is allowed under the act?

**Ms McTavish:** Certainly. You are allowed to clarify requests with the requester, and that would be something my office would ask: "You've already got this information. Is it okay to just start looking for information from the date of your last request?" That is very reasonable to do.

**Ms S. Murdock:** Actually, I think you have partially answered it. In terms of highway traffic accidents, I would imagine there would be a fair number of requests in that regard, just to have access to the accident report.



**Ms McTavish:** The accident report is a public record anyway, so that can be publicly acquired. There may be additional details. The OPP sometimes produces technical accident reports that get into more technical details, drawings, of why the accident took place, and certainly if someone wants that additional information they can request it through the freedom of information act. That does occur with increasing frequency.

**Mr Owens:** It is nice to see happy witnesses in front of us, for a change of pace.

The Solicitor General mentioned that training programs and things like that would be put into place around the freedom of information act. Can you tell the committee what type of recommendations the OPP has been involved in, or will you be involved in developing training packages for your staff around freedom of information?

1550

**Mr O'Grady:** I think I might be wiser to refer this also to my colleague Ms McTavish. There has been ongoing training within her office with her own people, as new people come on board and so on, dealing with the act, so she has firsthand knowledge of that kind of training. I am not aware of what training the Solicitor General was proposing, but we could speak of that training we know. Perhaps I could refer it to her for that purpose.

**Ms McTavish:** Was that specifically with the OPP? Because we do training within the ministry and we have also trained municipal police forces in how to deal with the act.

**Mr Owens:** I think it was with respect to police forces across the province, the OPP and Metro and everybody else. I guess, with the positive experience the OPP has had with the FOI, I made an assumption it would have some input into the training of folks across the province.

**Ms McTavish:** Over the past year, during 1990, we did train municipal police officers from the major regional forces for a two-month period on freedom of information legislation and how to deal with the legislation. The OPP staff sergeant I have on staff provided a great amount of input into that training program for municipal police officers. That staff sergeant also had considerable input into the Ontario Association of Chiefs of Police training program for other police forces that took place in the fall of 1990. So there has been input into that program.

As far as the OPP goes, we have ongoing training with the OPP on freedom of information issues. We have spoken to media relations. We go out and talk to district and detachment meetings. We talk to the OPP almost on a daily basis on various issues. It is not training, but we provide advice to the OPP on a multitude of issues including media issues.

**Mrs Mathysen:** I guess my question is to the commissioner. You have indicated in the last three years that the new act has not hampered you in any way to do your job. Has it facilitated you? Has it increased your ability to do a good job or helped you in any way?

**Mr O'Grady:** Again, because it was not a departure from the approach we had been taking all along, we really did not see any significant change at all. It was our inten-

tion and has been for years to be very concerned about the public right to know or the public interest in these matters. It has been our intention to advise them as fully as possible. The facilitator, of course, is the media. It is our intention to provide timely and as far-reaching information as we possibly can to the media so that that can be done. Since the advent of the act, that philosophy has not changed, so I really cannot say that I see any difference from the point in time when we did not have the legislation and in the last three years that we have had it. Basically, the circumstances have remained the same.

**Mrs Mathysen:** I know police budgets are very often stretched and burdened by the demands made on them. I wondered if providing this information has created yet another demand in terms of photocopying or processing or staff time. Is cost a concern at all?

**Mr O'Grady:** I guess that question has two sides to it also. Good media relations and the good flow of information to the public, I suppose, if one took the time, could measure that in return to us. It might very well be that it is money well spent in any areas that we have increased our focus. I think we probably get it back 10-fold in being able to do better policing. That is the answer as it relates to the OPP.

Certainly, there has been expense with regard to the freedom of information unit. That may be one of the reasons, when I became the commissioner, the freedom of information unit was part of the OPP. I did not like the public perception that it was part of the OPP, but I might have had a more practical reason in that it no longer comes out of my budget either.

**Mrs Mathysen:** In a way, I suppose the freedom of information does facilitate you, if, as you said, it helps you to do the job better.

**Mr O'Grady:** Any flow of information to the public and back to the police that increases understanding of our problems and solicits assistance to us is certainly in line with our approach of community policing these days. That is the modern concept. And the medium by which we do that is through the media. So all three parts working together in a co-operative manner is absolutely essential. If that breaks down, it is a great impairment to our activity.

**Mr Morin:** Our mandate is to bring in changes and to review the whole act and make recommendations to the assembly as to what the amendments should be. You have mentioned briefly to Mrs Murdock, I think, that you were quite satisfied with act itself. I will ask you this in a very candid way: If you were to give advice to the municipal police as to how to implement their own act, what would you tell them, or what would you tell the ministry?

**Mr O'Grady:** I do not really think I am competent to give advice to the municipal policing authorities, because I am not walking in their shoes and I am not aware on a day-to-day basis of the problems they face in dealing with the public and the problems they face in dealing with the media. I can really only speak for myself. I think it would be extremely presumptuous of me to suggest what they should do.



The only suggestion I would make is that that type of advice and information should come from those areas that are concerned with the issue at the moment.

**Mr Morin:** Has the municipal freedom of information affected your release of information policies?

**Mr O'Grady:** No, it has not.

**Mr Morin:** Not a bit. It did not influence it at all.

**Mr O'Grady:** No.

**Mr Sterling:** I am very much interested in section 11 of the act and section 5 of the municipal freedom of information act. In light of the recent decision, I believe by the Supreme Court or the Court of Appeal, to allow a woman to sue the Metropolitan Toronto Police Commission, I guess it would be, in that section which is the only section in any freedom of information act in the world which requires someone to disclose information without a request, I am interested to know whether you have utilized that section in terms of the Ontario Provincial Police or are concerned about being sued for not releasing information which would endanger a member of the public.

**Mr O'Grady:** I do not know if I can answer on point, but I will give you an example. I am trying to recall the time frame. I am sure it would be before the municipal act was in place, but I think the provincial act would have been in place at that time. Having said that, there was probably not a great reference to the legislation when the decision was made.

But you will know that some time ago there was a threat to bomb the transit system here in Metro Toronto. That was of great concern and involved a number of police services, including my own. At that time, when that information was in the hands of the authorities, so to speak, a decision had to be made. Would this information be better kept quiet to facilitate the investigation, or were the circumstances such that it demanded that the public be advised as soon as possible? Of course, the decision was obvious: The public had to be advised. So there was a weighing there of the public right and the public need to know as opposed to any other considerations. As you will know, that was the decision, to advise the public. I think that gives an illustration of the intention of police agencies in matters such as this.

**Mr Sterling:** I do not doubt the intention of the police agencies. I was more interested in whether anybody had taken this new right to sue the government or agencies of the government, which you are, and had proceeded to court with it. There was some question in the case of this

woman about whether she had the right to sue. There can be no question, if she is unsuccessful in her court case, in my view, that that right now springs from the new act, which is section 5 under the municipal freedom of information act and in section 11. But I was interested to know whether there had been any rights of action or legal suits against the OPP to date under that section.

**Mr O'Grady:** Not to my knowledge.

**Mr Sterling:** I suspect it is because most people do not know the section is there.

Are municipal police forces aware of their legal obligation, or have you had any conversation with them on that?

**Mr O'Grady:** I would not be competent to speak for them.

**The Chair:** I have a question to ask. I would like to vacate the chair.

**Mrs Marland:** We will waive. Stay where you are.

**The Chair:** It is basically for information. Earlier, when you first made your presentation, you indicated that it was your understanding that you just came here to answer questions from the committee. I was wondering, if you had the opportunity, would you have prepared a written submission with recommendations.

**Mr O'Grady:** No, I do not think I would have. For our purposes, I do not perceive that we have a problem. Therefore, I am quite content to answer anything that I am competent to answer, but it would not have been my intention to present a brief.

**The Chair:** I wish to thank the people from the Ministry of the Solicitor General for appearing here this afternoon and answering our questions. Thank you for coming.

**Mr McClelland:** The other group is not here?

**The Chair:** No.

**Ms S. Murdock:** I just have one question before we retire for the day. The book by Professor Flaherty, do we have a copy of that to be shared?

**Mr Fletcher:** Noel has one. He will photocopy it for you.

**The Chair:** You are certainly welcome to read the book if you wish.

**Ms S. Murdock:** Actually, could I borrow it?

**The Chair:** Sure.

**Ms S. Murdock:** Second, just a point of correction to Mr Morin: it is Mademoiselle Murdock, ce n'est pas Madame.

The committee adjourned at 1604.



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M-5 1991

M-5 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 25 February 1991

# Journal des débats (Hansard)

Le lundi 25 février 1991

## Standing committee on the Legislative Assembly

Review of  
Freedom of Information and  
Protection of Privacy Act, 1987

## Comité permanent de l'Assemblée législative

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée

Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
Greffier : Douglas Arnott



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday 25 February 1991

The committee met at 1325 in room 228.

### REVIEW OF FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

**The Chair:** Seeing a quorum, before the proceedings begin this afternoon I would like to read a letter from the Management Board of Cabinet in regard to the Freedom of Information and Protection of Privacy Act. I will make sure that each member gets a copy of this letter. It says:

"Dear Mr Duignan:

"It was kind of you and your committee members to accommodate my request to appear at a later phase of the committee's public hearings on the freedom of information and protection act, 1987. This postponement will not only allow me to attend more fully to the estimates submissions now under consideration, but will also give me the opportunity to hear the public's views and incorporate them into my intended statement.

"Aware of the critical role of your committee in ensuring a meaningful public participation in the review of the act, I shall continue to follow closely the deliberations during the public hearings. In particular, I look forward to the recommendations your committee will put together which, I am confident, will make a significant contribution towards creating a more open and accountable NDP government for all Ontarians.

"In the meantime, I feel that it is important that we maintain as open a process of consultation as possible to enable us to hear the divergence of opinions on this issue. The resolution on the question of open government hinges both on specific initiatives as well as on the manner in which we develop them. I expect that my ministry's own submission before your committee will in fact try to reflect as broadly as possible the many concerns of your constituencies.

"Thank you once again for your kind consideration of my schedule. Please relay to your committee my continuing commitment and support."

Signed, "Frances Lankin, Chair" of Management Board.

I will make sure that each member gets a copy of that letter.

**Mr Owens:** We had a presenter, Ken Rubin, who spoke to us I guess during the first week of hearings about some great difficulty with respect to obtaining information from SkyDome. I am wondering if it would be within the purview of this committee to invite either the chairman of the board or whoever would be in charge of the release of information to this committee and perhaps explain why they have such a great deal of difficulty in releasing information, as there is a great deal of public funding involved

in that facility. I guess if it is within the purview of this committee, and I guess we can get the advice of the other clerk, I would like to make that request to the committee that we do invite the person or persons involved.

**Mr H. O'Neil:** Mr Chair, I am just trying to recall, when he spoke to us, had they given him reasons why they would not divulge that information?

**Mr Owens:** I do not recall that he was provided with any reasonable explanations of the refusal to grant his request and as I say, the agency does not fall under any of the exempted agencies. It boggles my mind why they would not want to release the kind of information that was being requested. I certainly think that the taxpayers of this province have a great interest in finding out what happened to that agency and I guess it is not our job to probe the details of what happened during the construction, etc, but I think it would be of interest to the committee to find out why an agency such as SkyDome would have such great difficulty in releasing information to the public.

**Mr H. O'Neil:** If you are going to ask someone to come before the committee, whom would you ask?

**The Chair:** Why do we not just ask to have the clerk look at the request, review it and get back by tomorrow morning with some comment on that? I would suspect you are looking for the chairman of the commission, or do they have a freedom of information section?

**Mr Owens:** I am not sure. I do not think that is public at this point.

**The Chair:** Okay. Why do we not have the clerk look at the request and get back, if you could have an answer by the time we sit in the morning. Any other comments? No?

1330

### ONTARIO LABOUR RELATIONS BOARD ET AL

**The Chair:** I have asked the first witnesses, that is, the joint summation on behalf of the Ontario Labour Relations Board and the other boards to come forward, please. I am wondering if you could identify yourselves with respect to your organization and the position you hold in your organization.

**Mr Ellis:** Mr Chairman, my name is Ron Ellis. I am the chair of the Workers' Compensation Appeals Tribunal and I will be speaking to a joint submission that has been filed with the committee in writing by the chairmen of the five tribunals and boards—the Grievance Settlement Board, the Ontario Labour Relations Board, the Ontario Public Service Labour Relations Tribunal, the Pay Equity Hearings Tribunal and my own organization, the Workers' Compensation Appeals Tribunal.

Beth Symes, the chair of the Pay Equity Hearings Tribunal, is here with the deputation. The other chairs send their regrets. They would have been here had they not had



conflicts in their schedules. Representing the OLRB is Percy Toop on my left, who is the board's solicitor, and with Beth Symes and speaking for the Pay Equity Hearings Tribunal is Mary Anne McKellar on my right. On my far right is Carole Trethewey, who is counsel to the WCAT.

I want to thank you for the opportunity of appearing and speaking with you. I take it you will have received the joint written submission. The issue we want to address are exemptions to the requirements of disclosure under the Freedom of Information and Protection of Privacy Act that are of particular interest to tripartite adjudicative tribunals.

The tripartite adjudicative tribunals which are characteristic of the labour relations world consist, as you know, or most of you will know, of a neutral chair, a representative of the labour movement or the worker community and a representative of the employers or the employer community. All of these tribunals sit in panels of three and make decisions by a process of consultation among those three representatives.

Our group has read the Environmental Assessment Board's written submissions that were prepared by its counsel, Gail Morrison, and we would wish to record that our group generally supports those submissions as well.

The particular issues with which the tribunals and boards I am representing today are specially concerned are the public disclosure of first notes taken during a hearing by panel members, which I will refer to as hearing notes, and second, drafts of decisions and communications among the panel members during the course of the decision-making process, the deliberative process, and for convenience we will refer to those documents as deliberative materials, that is to say, drafts of decisions and communications among panel members during the course of the decision-making process.

I would draw to the committee's attention that these concerns are not hypothetical. Both the OLRB and the WCAT have already had requests for disclosure of hearing notes, and I may tell you that the consternation with which the idea of public accessibility to hearing notes and deliberative materials is viewed by all adjudicators within our tribunal and any other adjudicators whom any of us have talked to is universal and deeply felt.

I think it is useful to the committee's deliberations to appreciate that that is a reaction, not of hardened bureaucrats reared up in an atmosphere of secret administration, but of people whose background before joining boards and tribunals is generally that of litigators who are naturally disposed to viewing the principle of disclosure of information in other respects as very important.

I think it is significant that among that group the concern about the public availability of this kind of documentation is so strong. In that connection, I would also draw to the committee's attention that this position on those materials is also strongly supported by the Ontario Federation of Labour, by employer groups and by the counsel to unions and to management and employers. The labour law subsection of the Canadian Bar Association met some time ago and was appalled at the prospect of these materials being publicly available. This is the counsel which would normally be seeking such kind of information and it is one

of the rare occasions in the history of that subsection, which is a joint labour and management group of lawyers, where it has reached unanimity on a particular issue.

I understand also that you will be receiving submissions on the same points from the national organization, the Council of Canadian Administrative Tribunals, whose members will be expressing the same level of deep concern about public accessibility of this kind of material. The question then arises, why is there such a depth of concern from people whom you might expect to be friends of public disclosure generally?

Mr Chairman, by way of providing some context, I might take a moment to describe the hearing and decision-making process about which we are talking here which generates the materials to which we are speaking. What I propose to do is simply to describe the process at my own tribunal, which has certain unique aspects, but which will be generally reflective of what occurs at the other five tribunals or boards.

Basically, we get a request for appealing a decision of the Workers' Compensation Board. Our business is hearing appeals from the board's decision on workers' benefits, in broad terms. Let's assume that a worker is appealing a board decision. When we receive that request for an appeal, notice of that is sent to the employers concerned and they are asked if they will be participating in the hearing or not. We then get from the WCB the file in the matter, we put together a package of all of the materials from the file that our hearing panel will be looking at and we send that package to the worker and/or his or her representative and to the employer or employers involved. The parties are invited to look at that material and tell us whether there is anything in addition they think the panel should have, and we have a requirement that everybody give us and the other parties three weeks' notice of additional materials that will be presented.

A hearing date is scheduled, the parties appear, the hearing is held before a tripartite panel, as I have described previously and the worker typically testifies and is questioned and cross-questioned. The worker may bring additional witnesses if he or she desires. The employer then brings whatever witnesses they may want to present who are questioned and cross-questioned. Submissions are made at the end of the evidence on the basis of the documents filed and the evidence heard and at the end of the hearing, the three-person panel goes off and has its first caucus. The three sit down to discuss tentatively what the decision in the case ought to be and I can tell you that there is, I believe, a general impression that in a tripartite adjudicating process, the worker members and employer members are there as advocates of their community interests.

In fact that is not true in the individual cases and we expect in those caucus discussions for both the worker member and the employer member, as well as the panel chair, to be expressing their frank and honest views of their impression of the evidence that they have heard and seen in those hearings. We therefore expect it to happen regularly that the worker member will be expressing views that are contrary to the interests of the worker in that particular case and the employer member may be expressing views



that are contrary to the interests of the employer community and employer in that particular case. That discussion, because people are being frank and honest about the case, leads to the good quality decision that is representative of the perspectives that people bring from bringing different experiences of the workplaces to the decision-making process.

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During the hearing, as the worker and/or the employer's witnesses are testifying, the vice-chair and the members, all three of them, are there making notes of what strikes them as they go along through the process to be of particular interest or something that should be remembered or a question that should be asked or something of that nature. Those are the hearing notes to which we refer. At the caucus, notes are also made by all three members of what transpires at that caucus, what the tentative decisions were, what peoples' various views were. The panel chair then goes away and writes the first draft. Again, contrary to a general, I think, perception that the writing of a draft is the describing of a decision already made, in fact the writing is an essential part of the decision-making process. It is not until you put your mind to the discipline of writing something down and seeing it in writing and considering the publication of it that your mind gets down to some of the hard slogging and rigorous thinking that is required to be sure that you got it right.

So, in that process, the first draft may turn out to be different from what was determined in the initial caucus and the panel chair will send the draft then to the other members of the caucus and explain to them what the problem was, that they will see from the draft reasons that he or she has not been able to follow the tentative decision, and ask for their comments and input. Those will typically come back in written form, either scrawled on the edges of the draft—copy of the draft—or in a memorandum. This happens with full-time members but more particularly with part-time members, especially with part-time members living in other communities.

It may go through three or four drafts and that kind of communication may go back and forth a number of times, including one or more additional caucuses before a final decision is made. At that point, the decision is put in final form with the agreed-upon reasons and issued, and those decisions give complete reasons for the decision of the tribunal. They are published, they are sent to the parties, they are made available to the public. Particularly important decisions are selected and published in Workers' Compensation Appeals Tribunal Reporters that are available in the library, and so the materials that we are talking about are the hearing notes, the notes taken by the panel members during the decision-making caucus, the drafts of the decisions on which notes may appear from the worker and/or employer member and from the vice-chair and any memoranda that may have been exchanged among the panel members during the decision-making process.

Now it is in respect of those materials that this strong reaction against the contemplation of public accessibility to those materials arises, and I would like, then, to address the nature of the concerns that are generating those strong intuitive reactions. It is hard to articulate this. We have

made a valiant attempt in our written submission and the Environmental Assessment Board also made a valiant attempt in their written submission to you. But I think the essence of the thing is that making those materials accessible effectively serves to penetrate and make public the adjudication decision-making process. It is as though the panel of decision-makers, in their discussions in private as to their views on how the decision should go, it is as though that were being taped and being made available to the public. The ability of those individuals to contribute honestly and frankly to that decision-making process at that stage in the proceedings is entirely dependent on the privacy of those exchanges. Without that privacy, those kinds of exchanges would not become feasible. The objectivity and fairness of the decision-making process depends on it being done in private, and the accessibility of this material would destroy that privacy. We have mentioned also the chilling of the note-taking process that would be involved if one knew as one was making the notes that they might be reprinted on the front page of the *Globe and Mail*.

Also, the opening up of the thinking processes of the adjudicators to public examination and debate on the basis of what will necessarily be incomplete and misleading information would have serious potential implications for the credibility of the adjudication process. What I note down in my hearing notes may not at all be the most important thing that I take away from that hearing, and the initial draft may turn out to be entirely different from the final decision, and there is no way that the public can be informed of the process that led from that initial draft to the final decision. The thinking processes are being opened up to public examination and debate and on the basis of what will necessarily be totally incomplete and misleading information.

I would draw your attention to a decision of the Supreme Court of Ontario, the citation for which appears at page 3 of the written submissions. It is the decision in *Re Agnew and Ontario Association of Architects* (1987), 64 Ontario Reports (2d) at page 8. It is a decision of Mr Justice Archie Campbell, and the points that I have been making are particularly effectively articulated by him in that case in the following passage, which reads:

"The mischief of penetrating the decision process of a tribunal member is exactly the same as the mischief of penetrating the decision process of a judge. In the case of a specialized tribunal representing different interests, the mischief would be even greater because the process of discussion and compromise among different points of view would not work if stripped of its confidentiality. It is sufficient to say that there is no reason in logic to distinguish between a judge and a member of the statutory tribunal under consideration here. The same applies to their individual assessment sheets. To ask them about their individual assessment sheets or to seek their production would be like trying to get hold of a judge's notes made during the course of argument."

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It is, we think, perhaps the only recorded decision of the Ontario Supreme Court which addresses this particular



question. So there are substantial public interests that are not served by disclosure. And so the question then becomes, what is it that would justify a disclosure of this kind of material? One thing that becomes quickly clear is that the traditional justifications that emerge from the Williams report do not apply to the processes of the tribunals that I am representing. They do not apply to these tribunals for the same reasons that the Williams report found they should not apply to courts or to the Legislature.

The fact is that our procedures and process, our practice is open and available to the public. It is required to be open by the principles of natural justice that are enforceable by the judicial review proceedings before the Divisional Court and we all have a requirement of practice of giving full reasons for decisions. There is nothing that we look at in determining decisions in the way of materials, policies, medical files, whatever, that does not have to be disclosed in advance to the parties to the hearing and this is, as is a necessary routine, so disclosed. There is no purpose that the Williams report recognized as valid to be served by making this material public.

I would then respectfully suggest that given the serious problems that the disclosure of this material presents for the adjudication processes in this province, and given the absence of any traditional reason for requiring that disclosure, it would be my respectful submission that this committee ought to want to be confident that there are some very important other kinds of reasons for justifying that disclosure. And in our respectful submission, look as you might, you will not find any.

You will see at the bottom of our submission, at page 4, that we have a particular recommendation as far as the amendment that we are proposing is concerned. We are recommending that subsection 65(3) of the act be amended as follows to exempt tribunal members' adjudicative notes and deliberative materials from disclosure, and the provision in the act that we propose reads:

"This act does not apply to notes, including draft decisions, prepared by or for a person presiding in a proceeding in a court or other quasi-judicial tribunal if those notes are prepared for use in connection with the proceeding in question."

That, Mr Chairman, is our verbal submission. We would be very interested and prepared to deal with questions and my colleagues would be delighted to participate in that exchange if the committee were interested in having one.

**The Chair:** Thank you, Mr Ellis. We start the rotation today with the official opposition. You have about eight to 10 minutes to ask questions.

**Mr Villeneuve:** Thank you, Mr Ellis, for explaining your reasons. I somehow think that possibly initially, during the decision-making process, notes during the hearing, etc, maybe should not be made public. But I think somewhere during the decision-making process, be it at preliminary draft or final draft—final draft I guess is where you report and it becomes public information—I think there should be some way to see it just prior to that final draft: where are the important conclusions that may not be in the

final report but have a great deal of influence on the final decision in the appeal process?

I think somehow we as members of the provincial Legislature are quite often involved in these things, and I am not always happy with what I see. I would like to see a little bit of what happened before that final draft that we see and the appellant sees.

Do you think that there is room to show or to make public to the appellant the major factors that may not be in the final report but that influenced that decision?

**Mr Ellis:** In my view, the reasons for the decision must be those that are set out in the final decision, and it is those reasons on which the tribunal must rely and must stand on in respect—when challenges come from the parties about the decision.

There is no point, as a practical matter, no line you could draw between the private and the public, other than the line that is drawn at the final decision, that would be useful in that regard. Because if you looked at the draft before last, what you would see would be the correction of a number of typographical errors, and if you looked at the draft before that, what you would see would be maybe a change in a sentence—no explanation for it in any of the material, just a change that will have reflected a discussion, perhaps on the telephone, perhaps over lunch among the panel members.

So if you got that and saw that the sentence had been changed, where would that take you? I suggest it would take you then into an inquiry into the decision-making process. Who made that change? Why was the change made? What was the discussion and so on? There is no way to stop that inquiry from going straight into the heart of the adjudication process and the decision-making process.

With great respect, in all of our views, the adjudication, the decision-making process cannot survive that kind of probing inquiry after the fact. It has to take place in an environment of privacy in which people have confidence that that privacy will be respected after the decision has been made.

**Mr Villeneuve:** Are there minutes of your caucus meetings, be they one, two or three? Are there any formal or informal minutes kept of that?

**Mr Ellis:** In our tribunal, usually each of the three members jot their own notes down, usually at the end of the meeting, just to record what the decision was and who was going to do what and so on, because we are dealing with—I have described one decision. Typically our employer members would sit on four cases a week and so you might not get back to this particular one for several weeks. So you need a note to recall or to bring that discussion back to your mind. So it is that kind of note. They would be very brief, very non-standard, very personal to the individuals concerned, but that would be all.

**Mr Villeneuve:** So it is your feeling that when the caucus and you as a chair of a committee come out with specifying your reasons for this decision, you have basically covered all of the pertinent bases and you have made them public.

**Mr Ellis:** Yes.



**Mr Owens:** Thank you, Mr Chair. I would like to pursue Mr Villeneuve's line of questioning if I may.

I would tend to agree with respect to the issue of not allowing the private notes to be subpoenaed or whatever process is requested under freedom of information. My problem is, however, how do we open up this process?

1400

Having come from a labour relations background and reading some of the decisions by arbitrators like Kevin Burkett, whose decisions are quite lucid and extremely well written and who will take you through the process that he used to come to his decision, and then again reading some decisions of arbitrators whom I will not name whose logic is not always quite clear and where the decision is not always supported by the logic that is rendered in the document, I am just wondering how we can get some type of a process, recognizing that all arbitrators, all panel members of the WCAT are not trained writers by profession.

How can we make that process more open and more accessible so that the reasoning that you claim is supposed to be in the decision is in fact there so that we would not need to go inquiring behind the scenes and wondering what was on the decision-maker's mind when he or she made that decision?

**Ms Symes:** Mr Owens, that is an excellent question. It addresses a different concern, and that is the proper training of adjudicators in writing decisions. I think that writing the decision is the most difficult task of being an adjudicator, and at our tribunal we have put in process decision-writing workshops with judges of the superior court such as Mr Justice Catzman, professors of English and other experienced adjudicators such as Pam Picher, to come and talk about how you write decisions first of all that are clear, secondly that are understandable by the grievor or the person who actually came before them as opposed to the lawyers, and third that convey the answer in a clear and convincing manner.

I think the answer to your question is good training in how to write decisions. One of the things that we have learned is that the minimum number of drafts needed to get clarity and precision is at least three, and that an adjudicator in trying to achieve that clarity of thought and expression has got to work very hard. I think your concern is that decisions are uneven and some of them that are 50 and 60 pages long and you flip to the back page to try to find out who won or lost, that we have all got to work to have more relevant decisions that are shorter and are accessible to the people who come to us with disputes.

Quite frankly, sir, opening the drafts to public display would first of all not help the process, and I suggest it would be absolutely counterproductive; namely, you would get the first draft, otherwise known as the kitchen sink, and that would not produce clarity or precision. In fact, it would do just the opposite.

**Mr Ellis:** Could I just add one other thought in response to that question? There are remedies already for that kind of a problem where you have a decision that is not very understandable. For example, many tribunals,

ourselves among them, have the power to reconsider so that we typically—not typically, but occasionally get a letter in after a decision has gone out that says: “I do not seem to have attended the same hearing as this panel attended. Here are three issues that we discussed at length that were not covered. And I would like to have this reconsidered.” We will send that back to the panel and get them to supplement their reasons in response to that kind of a request.

There is also the remedy currently available at the Ombudsman. If a decision of that nature, inadequate reasons, is taken to the Ombudsman, the Ombudsman's investigation of the things that are not spoken about in the decision may well have the result of having the tribunal look at it again.

With respect to private arbitrators, who are selected by agreement of the parties, if the parties are not getting the kind of reasons that they want from the arbitrators that they are retaining, then they have a very easy remedy and that is to stop retaining those particular arbitrators.

I do not think that kind of a problem would begin to justify the kind of radical remedy that public exposure of these materials would entail.

**The Chair:** Are there any further questions?

Thank you, Mr Ellis.

#### ONTARIO GENEALOGICAL SOCIETY

**The Chair:** If the witnesses from the Ontario Genealogical Society could come forward at this time, please. Thank you for coming this afternoon. If you could state your name, then you have about 20 or 25 minutes to make your presentation.

**Mrs Simmons:** I am Marjorie Simmons. I am the chairman of the ministry liaison committee for the Ontario Genealogical Society, and we are here to address the post-1869 vital statistics records of Ontario. I have already distributed a copy of what I am going to speak about today.

In today's society we are seeing an unprecedented erosion of the benefits to be derived from the basic family unit. We feel that sound family relationships are an urgent imperative.

The individuals, who are we ourselves, who are compiling family histories are a vital force in promoting the benefits of family life. We study and record the links between generations and the details concerning the lives of those links, and in doing so we extol the virtues of family life.

The Ontario Genealogical Society requests an amendment to the Freedom of Information and Protection of Privacy Act to remove an obstacle to the free gathering of information about past family records, specifically the vital statistics records.

I am addressing three clauses in subsection 21(2) of the act. Subsection 21(1) states that, “A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except”—and the first point is clause 21(2)(d)—“the personal information is relevant to a fair determination of rights affecting the person who made the request.” Our comment: It must be the right of any person to determine for his family's historical record the simple facts of date and place of birth



of any of his ancestors, the date and place and the name of spouse of the marriage of any of his ancestors, and similar information of death, if this information is available in any record.

Clause 21(2)(f): except “the personal information is highly sensitive.” Our comment is that in our society we are seeing decisions supported by the courts stating firmly that there is no sensitivity touching on birth, marriage or death.

The third clause, clause 21(2)(i): except “the disclosure may unfairly damage the reputation of any person referred to in the record.” Again, the courts have established that no information concerning birth, marriage or death could possibly damage the reputation of an individual who would be mentioned in that record.

These three points could be advanced as a logical basis for requesting open access to all vital statistics records immediately they are collected. This is, in fact, the policy in Scotland and in a number of other countries which less closely parallel our own.

However, it is recognized that social changes encounter less criticism if they are implemented in stages. In consequence, the Ontario Genealogical Society requests an amendment to the Freedom of Information and Protection of Privacy Act which will permit open access to the registers of vital statistics as follows: that all Ontario birth and marriage records be released into the public domain following a 75-year confidential period from the date of the event, and that all Ontario death records be released into the public domain following a 30-year confidential period from the date of the event.

1410

This latter point of course is already covered in the act, but we include it here for the sake of uniformity.

I want to thank you for allowing us to be present today and Mr Gullen will speak to you further about this.

**Mr Gullen:** I am Malcolm Gullen. I am a member of the OGS liaison committee and I would like to use two minutes to just discuss very generally genealogy and family history. These two terms are almost synonymous; there are several distinctions.

Today is the culmination of 22 years of effort to gain recognition from the government of Ontario that genealogists and family historians should have a more liberal access to the vital statistics records of Ontario—22 years.

I think there is the impression among some public servants in Ontario, at least in one ministry, that genealogists and family historians belong in the narrow zone that separates the area which is covered by normal people and the outer fringes of normal people. Genealogists are in fact pillars of their societies. They tend to be retired people, senior citizens; about half of us are senior citizens. We tend to be stalwarts in our community. We belong to the lower, middle and upper classes. We are, if nothing else, scrupulously honest in paying our taxes and we all take good care to vote. There are 5,500 of us in Ontario, and these are members of the Ontario Genealogical Society who are willing to pay \$30 every year as a minimum,

branch fees over and above, to declare their interest in their pursuit of the history and roots of their own being.

I looked in the CVs that I was given of members of this committee to see if I could find two names that I thought might be particularly responsive to a discussion of genealogy. I found two. The first is your chairman, Mr Duignan. Is that how you pronounce it?

**Mr Duignan:** Duignan.

**Mr Gullen:** Mr Duignan. And the second was Mrs MacKinnon of Lambton.

McLysaght's book, *Surnames of Ireland*, says that the name Duignan had its origins in East Connaught. Now, East Connaught is the northwest quarter of the Irish Free State and it encompasses about seven counties. The easternmost counties are Roscommon and Leitrim, and Roscommon and Leitrim were extremely hard hit in the 1840s with the Irish potato famine. So I suggest it is possible that your forebears came to Ireland along with my wife's forebears around about 1840 or 1850. However, I notice that three of your children have got essentially Celtic given names, and it may be that either naming your children is an established family tradition or you came to this, you came to Canada much more recently than the 1840s.

Mrs MacKinnon, you have eight grandchildren. Do these grandchildren all know that they are descended from the Clan Alpin? They do, good. Do they know that the Clan Alpin is situated in Arran and in the east coast of Skye? Do they know the name, the maiden name of their grandmother?

**Mrs MacKinnon:** Mine? Certainly they do.

**Mr Gullen:** Good. Do you in turn know the maiden names of your two grandmothers?

**Mrs MacKinnon:** Yes.

**Mr Gullen:** Good. Well, I was right in one case anyway.

**Mr H. O'Neil:** How come you picked only the NDP and not the Liberals?

**Mr Gullen:** Well, the Liberals tended to have rather ordinary names that were very difficult to—

Interjections.

**Mr H. O'Neil:** Hugh Patrick O'Neil is ordinary?

**Mr Gullen:** Well, I am not saying it is—I should not have said ordinary.

**Mr H. O'Neil:** I am just kidding.

**Mr Gullen:** But there are thousands and thousands of O'Neils all over the place.

**Interjection:** Some of them are quite proud of it, I am sure.

**Mr Gullen:** Well, can we move on now to the second brief? There are two briefs submitted. The first one dealt with the OGS experience of the office of the registrar general of Ontario, and the second one was of four pages, and it is access to the post-1869 vital statistics records.

Paragraph 2 reiterates the wish of, the wish expressed by Mrs Simmons, my colleague. Paragraph 3 deals with the incorporation of the 30-years-dead rule in Section 2(2) of FIPPA. And I was pleased to notice that the minister on 27 March made a statement that all supporting documentation



including medical statements of death will be transferred to the archives. This is quite important to some few family historians.

Can we move now to section 4? It deals with marriage records. Now, I ask a question: what information provided in a marriage record could by its publication cause pain, distress or embarrassment to either party to the marriage and constitute an invasion of privacy, particularly after 75 years?

I am sure that some of us, anyway, know of people who have celebrated their diamond wedding anniversary. A diamond wedding anniversary is 60 years. How many of us know people who have celebrated their 75th wedding anniversary? I think there are precious few people who celebrate a 75th wedding anniversary. So really what we are talking about here are marriage records that relate to people who are now dead. But the inclusion of marriage records in the 75-year rule simplifies enormously the publication of marriage indexes. It makes it very easy to locate a marriage.

I point out too that the 75-year rule is identical with a proposal which is contained in a document published by the Thatcher government. It is a white paper. I have a copy here. Paragraph 5: the white paper governs access to registrations of births, marriages and deaths in England and in Wales. Scotland is completely separate. In Scotland, anyone can have access to an index of birth, death and marriage events almost from the time that these records are created. It takes about 6 to 12 months for the paper registration to be keyed into a computer database. Once the material is in the computer database, it is open to public scrutiny by anyone who cares to pay \$18.40; they can spend a whole day browsing through the computer database. Once they have located a record, they can either take notes from the record themselves or they can pay \$9 and something and get an official transcript taken from the record.

This information about Scottish practices is contained in a letter I have from Brian Philp, who is the deputy registrar for Scotland in Edinburgh, and I have a copy of that letter with me which I would be glad to have photocopied if you want it.

Paragraph 6: Prior to the white paper, the British government published a green paper. The purpose of a green paper is to present the government's thoughts on a topic through public discussion. In this green paper—I have a copy here—they outlined four possibilities of handling what they refer to as "historical" vital statistics records. They outlined four choices, and the last choice they outlined was the 75-year rule, which option, on balance, the government believes to be preferable. They waited 14 months and they had about 200 group responses. They considered all these and 14 months later they published the white paper, which says that as far as the British government is concerned, historic records are those records which are more than 75 years old, and access is free; they are now in the public domain.

1420

I thought it was interesting in paragraph 7 to look at how many Ontario residents would be affected by the publication

of birth records—how many living Ontario residents would be affected. It turns out that about 50% of male children born live in Ontario and 70% of female children born live in Ontario reach the age of 71. So about half the men who are around today and 70% of the women would be affected if their birth record was released.

So the question arises, does public access to a birth registration 75 years after the event constitute a meaningful and substantial invasion of personal privacy? Until about 30 years ago it was believed that a birth record should be concealed—a birth record should be kept private because it may conceal what was called an illegitimate birth. I suggest that today the concept of an illegitimate birth is very substantially null and void.

I discovered just yesterday a paper that was published by the government of Quebec. It is called "*La situation démographique du Québec*." It was compiled by a demographer, Louis Duchesne, and published by the Quebec government, and this makes the very startling announcement that if current trends continue, fewer than half of all Quebecers under the age of 50 will ever be legally married. If this is the case, then there are going to be many, many instances of so-called illegitimate births, at least in Quebec. I have no details like this for Ontario, but I suggest that the concept of illegitimate birth has very much gone by the board.

Actually, the concept, I think, arose in Scotland, and was not so much concerned with the moral aspect of the birth outside wedlock as it was concerned with the fear of the parish officials that the mother and her child would be a financial burden on the parish; somebody had to look after them. There are many instances recorded where if a woman was discovered to be unmarried and pregnant—if she did not belong to a village, if she was not born in the village or in the parish—she was smartly whipped off to wherever she was born so that her parents or her family could assume the responsibility of looking after her and her child.

I was asked, what do you say to someone who says, "Look, I've got an 83-year-old aunt who, it turns out, was born out of wedlock, and we would be absolutely mortified if this became known." In the last section of paragraph 7, I have suggested a mechanism by which this kind of situation can be tackled. But I do think that an extension should be (a) an individual act and (b) a deliberate act on the part of the applicant.

We have benefited from correspondence with a man who is a reasonably accepted authority on vital statistics records in the United States, Thomas Kemp. Now, he has his own ideas on vital statistics records. He feels that vital statistics records should enter the public domain at the time they are created and he gives his reasons. It was he who suggested that the society get in contact with the International Institute for Vital Registration and Statistics, of Bethesda, Maryland. These people wrote to me and I have copies of their correspondence in here if you want to look at it. They told me that, as in Scotland, vital statistics records enter the public domain very shortly after their creation in Argentina, which is not unlike Ontario; Bangladesh, which is very substantially different; Chile—



well, perhaps it is like Ontario; and the Dominican Republic, which again is hardly like Ontario.

I thought that paragraph 9 was particularly significant. Mr Kemp described a common practice in New England where cities and villages, towns, regularly publish an annual report that includes all the birth, marriage and death events that occurred in that year. Now to me this is significant because as a family historian I am interested in knowing where these things are published, but also because it indicates very clearly the absence of any state legislation that prohibits this activity. In other words, in the New England states that publish these things annually there is no state legislation which says that people cannot do this.

One of our members suggested that I contact the archivist of Alberta in Edmonton and I did. I have a letter from him that really describes the material that I have covered in paragraph 10. They have 24 metres of shelf space of registers of baptisms and marriages which extend from 1898 to 1983 to which access is given. Another accession number consists of 166 name index books to births, marriages and deaths which took place in the Northwest Territories and Alberta from 1874 to 1982, which is only nine years ago. So access in Alberta is given to records which are only nine years old.

Now, a problem arises here. I got hold of the Vital Statistics Act of Alberta and I looked up subsection 32(7.1) and it appears that the archives of Alberta are breaking the law. Because subsection 32(7.1) says:

"Notwithstanding subsections (2), (4), (6) and (7), a certified copy, photographic print or certificate, as the case may be, of the registration may be issued to any person if

"(a) in the case of subsection (2)"—these are birth records—"100 years has elapsed since the date of birth,

"(b) in the case of subsection (4)"—these are marriage records—"75 years has elapsed since the date of the marriage, and

"(c)"—this is about deaths—"in the case of subsections (6) and (7), 50 years has elapsed since the date of the death or stillbirth, as the case may be."

I do not know how you reconcile these two things. On the one hand, Alberta says that you can get access up to 1983 or 1982, and you look at the Vital Statistics Act of Alberta and it says something which is quite different. The only way I can see to reconcile this is that, briefly, it is okay to look, but it is not okay to publish. In fact people who have access to Alberta archives are required to sign an agreement with the archives of Alberta and one element in that agreement is that they agree that they will not publish unless they have the specific written consent of the director of Vital Statistics in Alberta.

We ask that you review this submission and the two written submissions very carefully, and we do hope that you will agree to include the 75-year rule in the FIPPA. We would like to very respectfully suggest that a new, complete section of FIPPA be devoted only and exclusively to birth, death and marriage records and that the word "record" be used and the words "public domain" be used.

I had some correspondence with the office of the registrar general of Ontario, and in my opinion they were being very picky because they claimed that if somebody else's

name—if the name of a living person appeared in a record, then issuance of that record, giving access to that record could be held up because the person was still alive.

1430

In my opinion this creates a ludicrous situation. Suppose a man dies and at his death he is attended by a physician who could be relatively young, about 25 or so. Now, if the physician signed the death certificate and gave his full name and his academic qualifications and perhaps his address, then does this mean that we have to wait until that physician dies and 30 years after that before the record can be released? Well, apparently on something like this we have to ask for an assessment from the commissioner.

**The Chair:** One minute to wrap up.

**Mr Gullen:** That is all. Thank you very much.

**The Chair:** Thank you very much. Did you wish to submit the white paper and the green paper and the various letters you had as evidence to this committee?

**Mr Gullen:** I have them here. I have already submitted copies, but apparently they have gone to the wrong place. Nobody told me, but they went to the assistant commissioner for privacy, and in fact they should have gone to the Management Board of Cabinet. So the assistant commissioner for privacy has copies of all these things that I have mentioned. You can either ask the clerk to recover them, or, if you simply tell me what records you want copied, I will provide them.

**The Chair:** In fact, it should have come to the clerk of this particular committee, as we are the committee that is dealing with the review of the act.

**Mr Gullen:** Would you like a copy of the white paper and the green paper?

**The Chair:** A copy of the white paper, the green paper and the various letters you indicated.

**Mr Gullen:** I will turn these over to Mr Arnott.

**The Chair:** Thank you very much. Mr Villeneuve.

**Mr Villeneuve:** Thank you very much for your presentation. I know I have received several letters from constituents reinforcing very much what you have just submitted. Does the federal act, the Access to Information Act, have any bearing on genealogy and what your interests are?

**Mr Gullen:** I do not think so. I have not searched the federal freedom of information act to discover it, but I believe that vital statistics records are entirely a provincial matter.

**Mr Frankford:** Can you briefly tell us who has access to death certificates?

**Mr Gullen:** After 30 years a death certificate enters the public domain by subsection 2(2) of the Freedom of Information and Protection of Privacy Act, and I assume that anyone—after a person has been dead for 30 years, any information concerning them is no longer classed as personal information. To me, that means it is now in the public domain, so that anyone who wants it can go and ask for a copy of a death certificate 30 years after the event.



**Mr Frankford:** Pardon my ignorance. Who, if anyone, has access right now in, let's say, the year or years immediately after someone's death?

**Mr Gullen:** I do not know. I suppose immediate members of the family would have access. The person who was looking after the settlement of the will would need a copy of the death certificate if there was an insurance policy involved.

**Mr Frankford:** Well, I would have to check. I am not even sure if it is that clear and I was a physician before I got into this business.

**Mr Gullen:** Are you from England?

**Mr Frankford:** No, certainly it was not clear and quite often one had to sign a certificate for the family for insurance policies, which was not—which had to be done because they, I believe, could not get the certificate themselves.

**Mr Gullen:** I know in Scotland the undertaker has to have a copy of the death certificate because he has to bury the body.

**Mr Frankford:** That is right.

**Mr Gullen:** But I just assume that insurance people have access and probably any member of the immediate family would have access.

**Mr Frankford:** Yes. Well, my recollection is that it was much more accessible in England and it was taken for granted that the family might well need it.

**Mr Gullen:** But as far as the public domain is concerned, it is 30 years under subsection 2(2) of FIPPA.

**Mr Frankford:** Plus in Scotland and other jurisdictions, you could go and—

**Mr Gullen:** Well, I know I have my own grandfather's death certificate, and he died in 1945. But from what I read from Brian Philp, anyone can go and identify a death and if they wish, they can look at the certificate.

**Mr Frankford:** And if I am not mistaken, here, if people are doing medical research on causes of death or patterns of death, that needs some special dispensation.

**Mr Gullen:** Yes, I know that there are some international standards, there is a code that corresponds to different causes of death and these are statistical records that are published, I believe, whereby you can keep track of the number of cases of people who died of suicide or something like that. But I do not think individuals are identified for this record.

**Mr Frankford:** But I think these things may be primarily produced by government departments and that individual researchers have to get special dispensation.

**Mr Gullen:** It could be.

**The Chair:** Any further questions? Thank you, Marjorie and Malcolm, for coming along and making your presentation this afternoon.

**Mr Gullen:** Thank you very much.

**The Chair:** And to correct the record, I am just a recent immigrant to Canada, for the last 16 years, but my family have been coming since 1919.

**Mr Gullen:** Did you come from Roscommon?

**The Chair:** Not Roscommon, but actually, my parents were born in Tipperary, which is just south of Roscommon.

**Mr Gullen:** Well, I was not that far out.

**The Chair:** No.

**Mr Villeneuve:** A long way.

**The Chair:** Thank you very much for appearing here today.

I am wondering if the witnesses from the Canadian Manufacturers' Association would come forward at this time.

I understand that the witnesses for the next presentation are not here yet, so I am ordering a 10-minute recess. The committee will reconvene at 2:50.

The committee recessed at 1438.

1449

#### CANADIAN MANUFACTURERS' ASSOCIATION

**The Chair:** I would like to call our next group of witnesses, from the Canadian Manufacturers' Association. Welcome to the committee hearings. Could you state your name and the position you hold in your organization? You have about 20, 25 minutes.

**Mr Dean:** Thanks very much. I am John Dean, senior counsel, manufacturing and development with IBM Canada Ltd, representing the Canadian Manufacturers' Association as the chair of a legislation subcommittee dealing with privacy and freedom of information. On my immediate left is Susan Boughs. She is legal manager for the east for Shell Canada Products Ltd. On my far left is Deborah MacCormac. She is corporate counsel for Du Pont Canada Inc. We are employees of firms that are members of the Canadian Manufacturers' Association. On my right is Ian Howcroft, who is a staff member of the association.

1450

I understand that you have received copies of our brief in the form of a letter to the Chair. Before turning to the brief, I would like to emphasize that businesses create and gather information that is just as sensitive to the wellbeing of the organization as personal information is to the wellbeing of an individual. Improper disclosure of this sensitive information could very well result in damage or injury to the organization, whether it be from lost sales, lost revenues, lost technology—it comes in many forms. And the loss to the business goes further than just a loss to the business. It also has a direct impact on the employees working for the business as well as the families of those employees.

The kind of information I am thinking about is information that may relate to tax projections, future products, technology, employment predictions; any information that is important to the operation of the business. If that information should fall into the hands of a competitor, the realistic expectations that a business might have arising from giving the information to government—whether it be voluntary in support of grant applications approvals or whether it be mandatory as required by the various statutes



that are after information that must be supplied—these expectations may not come to happen. So it is very important that sensitive information of businesses be handled properly and held properly by government when that information is provided to government.

In the time since the Freedom of Information and Protection of Privacy Act took effect, the association has noticed a number of things, but there are two issues that we would like to focus on today. The first has to do with the definition of “supply” in subsection 17(1) of the act and, flowing from the concern with respect to that definition, an issue that we did raise prior to the act being declared effective, a concern that there should be a right of appeal to the courts—appeal from decisions of the commissioner to the courts. Those are the two issues that we want to focus on.

As I have stated, just as it is important to keep personal information about individuals private, there is a legitimate need to keep the business information of organizations private. If confidential business information reaches the hands of a competitor, there may well be an unfair competitive advantage resulting in loss to the owner of the information and gain to the competitor. The need to keep important business information confidential is an ongoing concern whenever it is necessary to give such information to government institutions, regardless of whether the information is given because of a mandatory requirement in a statute or whether it was volunteered. The concern is even more important, though, if the information has to be given because of a statutory requirement.

Prior to the introduction of the Freedom of Information and Protection of Privacy Act, 1987, there were processes in place to maximize the amount of confidential information given to government while protecting the information from unauthorized disclosure. Government and business could agree on the terms, on what was to be done with the information and who was to see it. Statutes that made it mandatory for the business to provide information usually provided for the confidential retention of that information. I am referring to statutes like the Securities Act, the Corporations Information Act and the Business Corporations Act, which require data to be given but require that it be kept confidential.

Introduction of the information and privacy act changed the process for government handling of confidential information. Business now is only protected from damaging and potentially damaging disclosure if the information meets the criteria of section 17 of the act or if it was given under another statute that specifically protected the confidentiality of the information.

There was a change to the information and privacy act that took effect at the beginning of 1990, and this in effect repealed the confidentiality provisions of the other acts and established confidentiality within the Freedom of Information and Protection of Privacy Act. About 11 statutes that used to have their own confidentiality sections were preserved specifically by reference in subsection 67(3) of the Freedom of Information and Protection of Privacy Act.

The rest of these statutes that had the confidentiality protection repealed were not specifically mentioned as a result of the 1990 amendment. I gather it was decided not

to have long lists that could quickly become outdated but rather to treat the subject in a general fashion—which the association agrees is the right way to go about it—and if there was protection afforded information given under those other statutes that were not picked up in section 67, the general section 17 would suffice.

I am not going to get into how one protected information given to government under section 17; that is, information either voluntarily given or given because of a statute. It is set out in the brief and it is merely a reiteration of the section. But the key thing to note from the concern that we have is that the information to be protected under section 17 must have been supplied to the government institution in confidence. The association is concerned that, because of a narrow interpretation of the word “supply” in section 17 by the former Information and Privacy Commissioner, it may be impossible to meet the section 17 criteria to prevent government disclosure of confidential business information.

The commissioner has held in several orders that business information that had to be given to government because of an agreement, a pre-negotiated agreement, was not “supplied” and therefore not qualified for protection from disclosure under section 17. This logic could extend to situations where business information is given by mandate of a statute. If information mandated by statute is deemed not to be supplied because the donor had to provide it, there will be no protection under the act unless the mandatory statute is listed in subsection 67(3). Business information provided as a result of one of the statutes that was excluded from being specifically referenced in 67(3) is then unprotected.

Our concern about extension of the logic that came in particular from Order 87 to mandatory statutory situations is heightened because the former commissioner has been heard to have previously promoted such an extension.

This association feels the act should be amended to define supply in such a way as to protect business information given government from disclosure if it meets the other criteria of section 17, regardless of whether it was provided in a voluntary manner or because of the requirement of another statute.

We do not feel the Legislature intended, nor is it fair, to remove information previously protected under other acts from section 17 on the basis of a non-judicial interpretation of the word “supply.” Nor do we feel business information provided under a negotiated agreement should fail to meet the supply criteria. The donor did not have to agree to sign any agreement requiring the provision of the business information, particularly in Order 87. By signing such an agreement, the donor is merely pre-declaring a decision to voluntarily provide the information which, without such an agreement, would not fail the supply test. Pre-signing an agreement does not change the confidential nature of the information nor the potential damage to the donor.

1500

In our opinion, “supply” should apply to information given with or without an agreement. We really feel that “supply” means “provide without concern as to how or why the information was supplied.” The concern we have



with the non-judicial interpretation of the word "supply" raises the question of whether this would have occurred had there been a right in the act to appeal a commissioner's decision to a court of law. Without such a right there is a perception, right or wrong, that decisions may have been taken based on political considerations that would not have occurred had there been such a right.

Business wants to feel comfortable that the information that is given government, whether it be voluntary or mandatory, will be used in the way it was intended and not in a way that will hurt business. If the latter could occur, there is a tendency to hold back on the amount of information being given, which I do not think is in the best interests both of business and government.

We recommend an appeal from the commissioner to the courts be specified in the act along the lines of the federal access to information legislation. We feel this is necessary to provide a process that is, and is clearly seen to be, independent of government when there is a dispute as to whether or not requested information should be released.

We have seen several situations where a commissioner made confidential business information available that might otherwise have been protected by section 17. Who knows, the next situation may involve a different time, a different commissioner, a different government and the decision may be made not to release the information that perhaps should have been released. A right of appealing a commissioner's decision to a court of law, in our opinion, will go a long way to alleviating our concern.

That ends the formal presentation. I and the other members will be very happy to answer any questions to clarify what we have said and raise new points with respect to what we have said. Thank you.

**The Chair:** Thank you, Mr Dean. I invite the government party to open questions. Mr Owens.

**Mr Owens:** Thank you, Mr Chairman. With respect to legislation like the workplace hazardous materials information system legislation that came into effect a year or so ago, that provides protection for trade secrets being released, how do you folks feel about the implementation of legislation like WHMIS, the right to know, and where a trade secret, whether it is a blend of a certain substance or chemical, may in fact be needed, the knowledge of that blending or the end product is needed by a worker or an employer to protect the workers? How do you feel about the release of that kind of information to workplaces?

**Ms MacCormac:** We are involved in that and we are very supportive of the program. As you know, the trade secrets, the mention of that is shortly coming on board and certainly, from a worker's health and right to know and welfare perspective, we are very supportive of it. We do not think you necessarily have to have competing sorts of interests there. I think the interests of the company are that employees are protected and the public has the right to know, but by the same token that does not necessarily mean that everything in that information be made public—as long as the people who have to know do know.

**Mr Dean:** I support what Deborah says. A number of jurisdictions have entered into jurisdictional initiatives

through exchange data. The concern I would have and that a number of other members of the association have is that there may be information required or supplied voluntarily under one of the other jurisdictions, that gets exchanged with the government of Ontario, which is subject to the Ontario WHMIS rules, and we would be very concerned if section 15 of the act, which is a discretionary one, was used to allow information to be released that would not have been obtainable directly from the jurisdiction where it was first supplied. It is a thorny one and we chose not to add that as a third point, but that would be our concern in the WHMIS area, that information given to one jurisdiction and exchanged to the other does not somehow get a lower level of treatment.

**Mr Owens:** I guess that is the rule of thumb, especially in this province. If you want information on a specific company that you may not be able to obtain here in Ontario, the best place to find it, of course, is in Washington with the securities commission. Do you have any other recommendations you could make to this committee with respect to freedom of information and how you would like to see it impact or not impact on your members?

**Mr Dean:** One comment I have, but again, we wanted and felt there was an opportunity to have an impact in the area of the definition of "supply" and "court appeal." If that is seen fit to be moved forward with, a lot of our other concerns would go, but our thinking is that the standard under section 17 is very much higher than the standard in other jurisdictions, and it is a difficult one to meet.

Our membership felt we would just focus on the two issues, but that is the position of a number of members we have. The tests and the standards, if you have read them, which are "undue loss" and "prejudice significantly," what do those phrases mean? It is sometimes hard to show undue loss. If a competitor gets the information and is discreet, the loss may be imperceptible after the event, and in front of the event it may be even harder to establish. We will have to look at how it is working a little longer to see if it really is an insurmountable problem. At the moment we have chosen to be silent. Those are the views of some of us with respect to that question.

**Mr H. O'Neil:** About the general release of certain information: Have you any examples of a couple of cases that you could use, as far as the manufacturers' association would be concerned, where there was harm done, without using company names?

**Mr Dean:** It is a hard one to prove because a company that is hurt does not go around talking about it. From an IBM perspective, we have not suffered any damage that I am aware of because of information being obtained from Ontario, but as a company we have not had that much activity in the provincial area. That may have something to do with the nature of our business with the Ontario government. We find at the federal level that there is a lot of activity, and the competitors are trying to get information about us to allow them to have an edge or to better compete with us. There has been a working relationship particularly with the departments of planning services in IBM's case. The notices come in, we respond, but it has to do



with proposals and contracts and that kind of information. Some of the information we do not have a problem with and others we would, and we worked out a process, I guess you would call it, in terms of what can go and what cannot go and that seems to be working.

But again, the concern we have is potential, and in part it is based on our experience with our parent company in the United States. A number of organizations have been set up in the United States, and we can see it starting to happen in Canada, that are in the business of getting information and storing it and selling it to organizations that want it. That concerns us because we do not know what might happen to information on us that may be stored and sold. We do not think, and I am talking again about IBM's experience, that that is going to be good for us from a competitive point of view. So we are concerned. Have we any concrete examples?

**Ms MacCormac:** We have just been notified that there will be an appeal against a decision made by the Ontario government to disclose certain information about one of the new plants we opened in Maitland. The initial application was made and they wanted to see our certificate of approval. But as you may guess, our certificate of approval for a large manufacturing component in this plant is a significant piece of documentation. We sat down with the government and went through this and said, "We would prefer this, this and this, this not to be disclosed and you can certainly disclose this." So the government was happy with that and it was disclosed and now there is an appeal being made against that decision. And we have no idea who is making this appeal because it is done through a law firm, so we do not know the main person who wants this information.

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But what we are looking at here is somewhere in the neighbourhood of an \$18-million investment to get this project up and going, about 10 years of research time, a \$30-million investment in the capital equipment and plans and this sort of thing for this plant. We have samples of design and how the operation is set up. We purchased that as proprietary information from a third party and said we shall not disclose, but we gave that information to the government as part of the certificate of approval. So all that information is there for the government to use in its judgement as it sees fit.

But there is some very nice information with respect to one aspect of that which, if it could be had through this piece of legislation, would be very harmful to my corporation, because we have invested a lot of time and energy and so have the people we have hired to help us bring this thing into fruition. Just to know how much of this product we are going to make, and the design and layout of that plant could be very useful information. I think it would do us a very great deal of harm to have to disclose that beyond the government.

**Mr H. O'Neil:** Maybe I should know, but I do not, but in a case like that, where you have had somebody request that information, can you not demand to know who is requesting that information, even if it is through a lawyer?

**Ms MacCormac:** I do not believe we can; I did not think we could.

**Mr Dean:** The particular—

**Mr H. O'Neil:** That would be interesting to know, I think, Mr Chairman, something like that. If people are going to demand information from certain parties, I think those parties should know who is requesting the information.

**Ms MacCormac:** You see, one of the aspects of it, too, is that the original intent of this legislation, if I am not mistaken, is mainly from a health and safety dimension, is it not? That it is not going to help anyone to know the volume or the production quantity of this operation, because we have provided the material safety data sheets, which is all the background material that tells you of all the possible health effects. So all that information has been taken into account and is available to the government. What falls out of it is really the practical information the public needs to know, like: "What is this plant going to be doing? How is the air going to be impacted? How is the water in the stream that runs by my brook going to be impacted?" Those are significant facts.

I do not think it helps them—a neighbour, for example, or a worker—one bit to know the actual volume, but a competitor would absolutely love to have that information because then he would know how much room is in the market for him and what our projections and our—very expensive, as you know—research and marketing information has come up with. So you can see where that sort of separates the health dimension from it, from a very practical, hard-core business dimension.

**Mr H. O'Neil:** You have turned it down and made an appeal?

**Ms MacCormac:** We have an appeal now. We are preparing the documentation, but we do not appear in person. We are only allowed to make written submissions, and the decision of the commissioner is final. We do not get to come in person and plead our case; we send it in in writing and keep our fingers and toes crossed that the commissioner will rule in our favour.

Members of the ministry who are working with us are saying, "Well, we hope to heck that it does get ruled in your favour because if it goes against you we can see the problems it is going to create for other industries." They are not going to want to be as open and candid with the certificates of approval applications, and you are going to have this pulling back and forth; the government saying, "I need more," and industry saying, "Oh, no, but you can, but we will have to think up ways so that we do not have to give it to you."

**Mr H. O'Neil:** It would be interesting to know how you make out.

**Ms Boughs:** At Shell we have experience with the federal Access to Information Act. Upon receiving notice that they wished to disclose some information, once we managed to establish that the information was commercial, that it had always been treated in a confidential nature and that it should not be disclosed, there was agreement by the federal government that it should not be disclosed. The matter went no further and we did not have to show harm.



That is one of the difficulties, from your Ontario legislation and the question you ask, "How do you show harm?"

**Mr Dean:** In order 87, which was given in the summer of 1989—it was a case, and it is public record—involving the Toyota motor company and the starting of a business in Cambridge and somebody, again unknown—you cannot find out who requested information from the order—asked for information with respect to the calculation of interest payments for a Toyota Ontario facility, the size of the land, the building, the price of the land, the target investment budget, conversion rate from Japanese yen, the production targets, employment predictions, training grants, the infrastructure, information on taxes, the construction schedule and a number of items. Some of it would qualify under other parts of section 17, some of it would not, but the commissioner said all the records did not qualify for section 17 protection because the information had not been supplied in the way that the commissioner was interpreting the word "supply."

The commissioner did evaluate the harm test, went on to say he did not have to do this but he was going to anyway and discussed harm, and it became very apparent that on that issue, since it was a lost battle on the point of what "supply" meant, that Toyota just was not about to start putting on the record all the harm that was going to happen to it, which would then go out to more than just the party that requested it.

So how do you prove harm? It is hard. The owners of the information want to show everybody all the harm that is created, to give comfort to the requester that they are after the right stuff, that it will work if it is used against the owner. It is a touchy area.

**The Chair:** Thank you, Mr O'Neil. Did you wish the legislative counsel to get some information on that request?

**Mr H. O'Neil:** I would like that myself, yes. What happened in this particular one with the car plant?

**Mr Dean:** The information was released.

**Mr H. O'Neil:** All of that information?

**Mr Dean:** As far as I can make out from the decision, yes.

**Mr Villeneuve:** Do any of you from time to time request information? You have quite obviously provided information. Do you have occasion to request information, and what type if you do?

**Mr Dean:** IBM does not make a practice of using the freedom of information acts in the various jurisdictions. That is not to say that we might not, but it has not been our practice so far.

**Mr Villeneuve:** Could you comment on the fact that the person in charge of the freedom of information will also be the same person in charge of protection of privacy? Is that compatible, in your mind?

**Mr Dean:** No. Again, this was not what the association elected to talk about, so this is John Dean speaking and I think I am speaking on behalf of IBM, but there is a concern about the countervailing interests of privacy and freedom of information seen to be pulling and tugging at each other. They do not seem to ride naturally in the same

boat in the same direction. I was alluding to that somewhat at my informal opening remarks when I said that business information, that property, use of it, the confidentiality of it was just as important to a business as information on an individual was important. Why have laws that protect the information relating to persons and not extend the same courtesy, if you like, to another legal entity, which is the corporation which has people working for it who could be hurt just as much as an individual could be if information is not properly released?

So I do not think that the two concepts ride naturally in the same boat and that is why our position, and it was the position of the association too, when the federal laws were on the discussion table, is to have a commissioner of privacy and a commissioner of information. I had the opportunity, on a couple of occasions, to sit on panels with Commissioner Linden. We got along, and he had a concern about this tugging and pulling because he was wearing the same hat, although I think he managed it very well. But it is no mean feat.

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**Mr Villeneuve:** Do you see a problem with the freedom of information as it is now set up encroaching or infringing on patent and copyright areas?

**Mr Dean:** I have not given that that much thought. Off the top, patents—if you want to patent something, that is tantamount to publishing it. In the trade secret area, that is a patent for an idea that could not—

**Mr Villeneuve:** You are locking it in.

**Mr Dean:** You choose to go the secrecy route and if you are successful in going that route you are able to keep a monopoly, if you like, on the idea for a lot longer than if you opt for the patent route, which will expire after the passage of time. So definitely this subject definitely does have an impact on trade secrets. It may cause individuals to seek patent protection that might otherwise have gone the trade secret route because of a need to reveal the trade secret to government. If the trade secret is patented then it cannot be used without the permission of the patent owner.

As far as copyright is concerned, I—can you see it? I do not see a problem with it.

**Ms MacCormac:** One of the problems I foresee is that I know with respect to some of the information that we have and that we use in coming to grips with trying to develop a new plan is often we have—we have in the United States our parent, a large mass of something like 2,000 PhDs, and they work for us and compile tremendous amounts of information for us. That is all information that is privately paid for and generated and if the documents that they create become public, then all the work and all the energy and all the effort that they have expended to create that is lost. I think that would be a terrible blow again to an organization, any organization, if it is trying to have a little bit of a competitive edge and trying to progress forward. To not be able to protect information like that would be an unfortunate situation.

**Mr Villeneuve:** Were you somewhat reluctant to provide the government with information regarding your new installation at, Maitland—is it?



**Ms MacCormac:** Yes.

**Mr Villeneuve:** And it is great to see you come to eastern Ontario and thank you for that, but were you providing that with some hesitation as to the fact it might get into the wrong hands? I think I know why it was being requested and it is in the hands of government now. Would you want that information protected?

**Ms MacCormac:** You are asking me, did we, when we made our application for certificate of approval, hold back? I cannot say that we did that much, because there is quite a bit of it that we do not want disclosed, and one of the key pieces of information appears about three places in the document. I have been at several meetings where they asked us directly, "What is this?" and we have all hesitated with it. So it is a very significant piece of information and I do not know if we could have hidden it even if we tried. But we certainly did not try.

**Mr Villeneuve:** These are some of the problems that we have to address with this—

**Ms MacCormac:** That is right. This is an element of trust.

**Mr Villeneuve:** Exactly.

**Ms MacCormac:** I mean, we certainly stamped certain pages of this document "confidential" and we indicated we were releasing it for the purposes of this application and that we would hope the government would come to us and speak to us before they disclose it. So we are trying to be as honest and open as we can, but you can see that there could be a problem if—

**Mr Villeneuve:** Well, you certainly bring a different slant to the deliberations and the hearings here than most people have, because of the uniqueness of manufacturing. I certainly want to thank you for bringing that to it.

**Mr Dean:** At one point I said that IBM did not make use of freedom of information laws to get at data. We are a large company and there are laws all over the world. I really do not know. What I can say is that I am not aware of it and we certainly do not have any printed processes or guides instructing people on how to go about making use of freedom of information to get competitive information on those competing with us. We do have departments that work on gathering that kind of information and I am not aware of them using these laws to get that information.

**The Chair:** Carman, next question?

**Mr McClelland:** A question that you probably cannot answer specifically and that frankly I would not expect you to. But in a general sense, at least three—and I am sorry, I do not know which company you are with—but three companies in an international scope, and Deborah mentioned the competitive aspect of the business. What position and what kind of jeopardy would you foresee future investment in Ontario being placed in with respect to unhappy application, from your point of view, or unhappy—dare I use the word "liberal"—interpretation of the word "supply," in a continuation of that broad interpretation? Is it reasonable to presume that it could put us at a significant disadvantage with respect to future investment?

**Mr Dean:** I am not aware of any other jurisdiction that puts that standard on the term "supply," so it is not going to cause investment to flock. What it is going to do is make business more cautious about what it gives, particularly in the mandatory area where there is a statute that requires it, but even in the voluntary where you try to work to put a deal together that is in the interests of Ontario and the consumers and business. But the tendency, and it is human nature, I think, is to err on the safe side and to only give it if you have to, if negotiations are stalling.

Having that kind of an interpretation creates an element of uncertainty which I do not think is going to do Ontario and business in Ontario any good. We would like to know that "supply" has the meaning given to it in the Oxford dictionary, if we could get that.

**The Chair:** Are there any further questions?

With the permission of the committee, I would like to follow up on a point of order and ask Mr Dean a question, if it is permissible. You indicated, I think in answer to a member, that there were organizations in the United States that compiled information on firms and were in the business of selling it. Do such organizations exist in Canada, and if so, does the federal freedom of information act address those firms?

**Mr Dean:** I have knowledge that there is at least one individual in Ottawa who is doing this. Does the federal legislation address it? No. It is a legitimate business. By addressing it, do you mean having some way of stopping it or trying to—

**The Chair:** I am just wondering—

**Mr Dean:** No.

**The Chair:** Does that particular company sell trade secrets or deal with information, points that you raised here today?

**Mr Dean:** No. They do exist in Canada. It is just in its infancy here. It is in its infancy and there is a business opportunity that is not against the law in our jurisdiction or the federal jurisdiction.

**Ms MacCormac:** I think what they are doing is they look very enthusiastically. My sense would be for the government to open the floodgates as far as possible so that they do not have to do anything illegal to get this information; they just have to be very, very persistent.

**Mr Dean:** One-stop shopping. In many instances you can dig the information out. It is hard to get at, but it can be got. But it makes it so much easier just to go to the one place and pay for it. It is there.

**Mr H. O'Neil:** It would be interesting, Mr Chairman, just for our research people too to just give us a little bit of an insight into something like that.

**The Chair:** Okay. Our counsel will get that information for us.

**Ms Boughs:** But to answer your question about the federal legislation, trade secrets are easier to protect under the federal legislation than they are in Ontario. For example, the public interest override does not apply to trade secrets and you do not have to prove harm to protect trade secrets. Protection is given as a right.



**The Chair:** Thank you, Mr Dean, and members of the Canadian Manufacturers' Association's committee on the freedom of information. Thank you for coming this afternoon.

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# RADIO-TELEVISION NEWS DIRECTORS ASSOCIATION OF CANADA

**The Chair:** Our next delegation was to be from Mohawk College but they have cancelled out this afternoon due to heavy snow in the Hamilton area. We have moved up the next delegation, from the Radio-Television News Directors Association of Canada. I would ask those witnesses to now come forward.

Thank you, gentlemen, for coming here this afternoon. If you could state your name and what organization you represent. We have some extra time this afternoon, so we are a little flexible if you want to go a little longer than normal in making your presentation.

**Mr Clarke:** Thank you very much. Good afternoon. I am George Clarke, the president of the Radio-Television News Directors Association of Canada and also news director at CFPL television in London, Ontario. To my immediate left is Gary Ennett, vice-president, radio for RTNDA Canada and news director at CFPL radio in London, Ontario. To my far left is John Hinnen, immediate past president of RTNDA Canada and vice-president of news at CHFI radio here in Toronto.

We have a short written presentation, sir, before responding to questions.

The Radio-Television News Directors Association is a national association representing news directors at most broadcasting stations in Ontario and across Canada.

Radio and television news operations tend to report what is currently happening in a given community. We do not deal extensively with historical records or government files that might contain sensitive personal information. Our primary mandate has evolved to one of reporting on matters of immediacy. Much of our time is spent covering sudden developments such as major fires, shootings, robberies, serious traffic accidents etc, in which the identities of individuals involved are a central part of the story. Unfortunately, because of this legislation which now can restrict the information flow, stories about such incidents become shallow and incomplete. It is almost as though they have become censored to a degree at the source.

We feel strongly that this act should not apply to immediate events. The RTNDA and its members know on a firsthand basis what types of things the community wants and expects to hear about. Where are the fires and the shootouts? Who has been charged and when? These are just a few examples of the types of information that civil servants, we feel, should not be given exclusive control over.

We are not talking about documents, custody of records, invasion of privacy. Our news reports deal with hard information about matters that individual members of the community must be able to know in a civilized society. The kind of information that we are addressing is not gathered by

government as the result of receiving confidential information provided on that basis.

The access to information regime established by the act under review by this committee is designed to deal with documents and records in the custody of government. It has an information commissioner, an appeal process with some form of judicial review. We ask: what does that have, any of it, to do with a fire raging at Yonge and Bloor? People living and working in the area will immediately want to know exactly where that fire is, whether anyone was hurt, if so, who was hurt; and if a person is subsequently charged with arson, people will want to know who was charged. It is not good enough to report that a 30-year old Etobicoke man is in custody. People want to know, and in a democracy, we feel, have a right to know, his name.

The basic questions people have are, "What has happened?" and "How have the laws been enforced for the safety and protection of members of the community?" More importantly, if the police are not bound to disclose whom they have charged, then there is no real element of accountability. You may never know whether your relative has been arrested and is being held. The relative may have been taken to some precinct and brought before some court not in your particular area. How will you ever find out about it?

Fortunately, we have a rule of law and well-run police forces that attempt to safeguard the constitutional rights of the citizens of this country. Public scrutiny of the administration of justice has been held by the courts to be its most fundamental protection. Without public scrutiny there can be no justice. How can you respect a justice system whose basic tenets can include secrecy, anonymity and facelessness?

**Mr Ennett:** Since the start of this year, ladies and gentlemen, the RTNDA has documented at least a dozen cases where basic information has been withheld by the authorities and, in each case, no compelling reason was given for the suppression. Obviously we do not have the time to detail each incident, but we would like to highlight the most shocking examples of what we regard to a degree as censorship.

In Sudbury last month, a man with an unloaded gun was shot and killed by a police constable, and officials refused to release the name of the shooting victim. The senior investigating officer complied with a request from the man's family to withhold his identity. This was not a case of local authorities not understanding the law. In this case, the decision to withhold the name of the shooting victim was reportedly made by a senior investigator with the Ministry of the Solicitor General's special investigations unit, based right here at Queen's Park. This did not stop the Sudbury Star newspaper from identifying the victim. By digging through the paper's obituaries, we are told, they managed to connect the death announcement with the shooting.

Some of you might say, "Well, they did get the name." But what kind of a justice system, we ask you, forces reporters to comb through the obituaries for leads and call funeral homes to confirm what investigators should have provided in the first place?



Another example, this one from the London area: In January, there was a serious accident on the 401 east of the city. Two children were killed, and their mother was seriously injured in another median cross-over collision. The driver of a transport truck that allegedly struck one of the vehicles from behind was charged with leaving the scene of an accident. The OPP detachment in London refused to release the name of the truck driver some eight hours after the fact, even though the man was in custody, the reports had been completed and he was due to appear in court later that morning. The media were told they would simply have to await the man's appearance in court in order to learn his identity.

Prior to the implementation of the Freedom of Information and Protection of Privacy Act, this type of information was routinely released by the OPP and most other police forces in the province. Now it is suddenly regarded as top secret until the suspect appears in court. Then it magically becomes public information. Why suppress information on the police blotter that is eventually going to be completely public in court? It just does not make sense to us.

The RTNDA appeared before the legislative committee studying the proposed Police Services Act last summer. We made essentially the same argument then. We intend to file with this committee a copy of the presentation we made at that time. Now is an excellent occasion to have legislators carefully consider the ultimate importance of the view we expressed then.

It is our recommendation that the act under review should be amended to ensure that the names of persons charged with offences, or information concerning incidents where persons could reasonably be expected to be injured, do not fall within the exceptions from the duty on the government to grant access to the information. In fact, we believe there should be a positive duty on the appropriate government representatives to make such basic information available on an immediate basis.

When the current act was being drafted, one of the chief motivating factors appeared to be the protection of victims' rights in the province. But the application of the act has brought this response from the head of the organization known as Victims of Violence. Carol Cameron fears that keeping the identity of crime victims anonymous will "desensitize" the public to crime. Noting that the identities of young offenders are already protected by law and that courts can issue orders protecting the identity of sexual assault victims, she says victims have no reason to fear media coverage; quite the contrary. In her words, "I think the media have helped. We've been able to put a face on crime." And she added, "My biggest fear is when the identity of the victim is not known, what in the heck does it mean to anyone?"

Who does this law really protect? If it is to protect victims, then obviously it is not doing what it was designed to do. If it is designed to protect the rights of the accused, there have been serious doubts raised about that as well.

Experienced criminal lawyers who appreciate the intent of the legislation—and we understand what is attempting to be done here—still have grave concerns about its

implications, its application, in a democracy. Veteran defence lawyer Norm Peel of London accurately predicted that this legislation and its application would create a real problem in the community and would affect the public's right to be fully informed.

John Getliffe, the immediate past president of the London Criminal Lawyers Association, says even though the motives may be laudable, he cannot support any legislation that imposes any type of secrecy. Says Getliffe: "Not releasing victims' names is a difficult one for me to follow. It is very dangerous in a democratic society."

If it has been designed to foster more harmonious relations between police and the media, this act obviously has backfired in that area as well. We ask, just whom does this law serve?

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Because it is so loose and can be interpreted in so many different ways, it is now exacerbating relationships between police and the media across the province. The police who have to administer the act have a difficult job on their hands. We do not mean to sound critical of the police in general. We understand the situation they are in. They are really caught in the middle.

From the looks of this legislation, we feel they should be taking legal advice every step of the way. But we have to ask, what kind of drafting is that? The exceptions to the rule of access are so general that it is only prudent and sensible for civil servants to err on the side of denying access, as the gentleman from IBM said just moments ago. The inclination to withhold information is even greater when there is no penalty for denying access to a record that should really be made public. We feel this is one loophole in the law that must be seriously addressed.

A few moments ago, we cited some serious cases of suppression that have occurred since the legislation went into effect. Other scenarios have almost been laughable. For instance, in Owen Sound last month, fire officials refused to give the address of a house fire or the name of the owner citing restrictions under the freedom of information act. It was just incredible. The fire marshal's office was asked to investigate this particular incident and, lo and behold, a few days later admitted the information should not have been restricted. But these kinds of incidents are happening every day across the province. There is widespread confusion. Information chaos is how many of us perceive it.

The confusion even extends to the school system. In London, the board of education says the act prevents the media from interviewing students on board property without parental consent. But consider the practical implications. Suppose an assignment editor wants to interview students in the classroom during a discussion of the Persian Gulf war, and we have seen stories of this nature done on American television quite freely. As we understand it, a battery of letters would have to be written soliciting consent. Six weeks later, the responses might finally arrive and the editor would then learn whether or not he could proceed with the idea, assuming it was still newsworthy. By then the war could be history. It just does not have any real,



practical value with the structure that has been imposed on the civil servants to carry out.

Consider, with this same area with the school boards, the implications for the sports media that cover high school athletics. The media can interview the high school hockey star because his games are played at an outside arena, but the basketball star is off limits because his games are played on school property. You just cannot win with this act.

But on the serious side, how in any stretch of the imagination can this be called an access system when one of its major characteristics is to deny or frustrate immediate access? If it is to be a genuine access system, we submit the exceptions to the rule of access should be profoundly limited and clear in their application.

**Mr Clarke:** Today we are expressing the concerns of news directors from Ontario, but as a national organization we can tell you that this troubling piece of legislation is creating anxieties for news directors across the country. Our counterparts in communities as far away as Yellowknife have told us that the governments of other provinces and territories are watching developments here very closely, with an eye to implementing similar legislation in their jurisdictions. We feel it would be a terrible mistake for this law in its present state to be copied in other regions of the country.

Radio and television news directors across Ontario are seriously concerned about this act because it makes us unable to provide the type of information expected by society. We are also concerned because it is destroying our attempts to maintain good working relationships with municipal authorities that we have spent years trying to achieve. Surely the law was not designed to put the media and those who enforce municipal laws in opposing camps. Yet to a degree that is exactly what is happening.

The RTNDA is extremely concerned about the confusing and inconsistent application of the freedom of information act and its negative impact on freedom of expression in this province. Consequently, we are willing to voice our concerns before any body or committee that will consider amendments to that act that will restore ready and uniform access to information that has traditionally been regarded as being in the public interest.

**The Chair:** Thank you. I would just further point out that this committee is looking at the Freedom of Information and Protection of Privacy Act, 1987, the provincial act. We have broadened the scope a little bit on the committee to include briefs such as yours here today, but basically we are looking at the provincial act, taking into consideration some of the points that have been raised in relation to the Municipal Act.

**Mr Clarke:** And our feeling was, sir, in making a presentation here today, that although now we have new guidelines and annotations in effect, the law basically is the same as the 1987 act.

**The Chair:** Thank you. We will begin with our questions. Mr O'Neil.

**Mr H. O'Neil:** I can see from your point of view that you come as news directors and you want to get whatever

news you can when you can get it, get it out to the public and make sure you share it. But I wonder if you, in a way, do not have a little bit of a conflict of interest, considering where you are coming from.

I guess one of the cases—and I could refer to a couple here that you mentioned—about the truck driver: He has been taken in and he is going to be charged, but you want the information right away when he has been picked up. What happens if the charge does not follow through, in other words, that it is somebody else or that something happens in between and you have put that across your radio stations and you malign this individual or this person?

I think of another example. In particular, one case I will never forget as long as I live is the Susan Nelles case, where that person was dragged in front of the newspapers and the radio stations and right across the province of Ontario. I know her family. I know what it did to her. I know what it did to her mother. I know it killed her dad, possibly her brother, just because of the publicity that was given to a person who was eventually cleared.

You talk about wanting the right to go on to a schoolyard. Adults have certain protections as to being questioned when they are going to be questioned in certain cases. They have advice for people who go there to protect what they are going to be questioned on. Some of your people are very skilful in the way they ask questions and the way they get things out and sometimes they are correct in what they get, other times they are not.

I would like to think what we are dealing with here today is there not to serve you or to give you news items, but to protect the individual or the person. Then, if they have done something wrong or something like that, okay, maybe it should be put out to the public.

But I am saying to you that there are many cases and many times when maybe some of your people do not use their best judgement in what they put out or what they use. I would ask Gary there. I do not know whether you have a daughter or not, but if you had a daughter who was raped, do you want that information to go out over your radio station within a few minutes?

**Mr Ennett:** Absolutely not.

**Mr H. O'Neil:** Maybe these are the extremes.

**Mr Ennett:** I think you raised a good example. We have never used the names of rape victims. Society has simply found the mere suggestion of it abhorrent and we are sensitive to societal concerns. So, for that reason we have never been required by law to restrict that information. It is just a given that any credible news operation has enough ethical sense not to use those names, and that is what we are suggesting.

**Mr H. O'Neil:** I would hope that what you are saying is right, but I am saying to you maybe that does not always happen. You have competition among your reporters, or the news people do among their reporters who are going to go out. In a lot of cases their stories will not be covered unless they are sometimes sensational, and hopefully the majority we deal with, whether here or anyplace else, are very respectable people but that does not always happen. It



may be that one case or two or three cases that give a bad reputation to some people.

Again, there have to be certain safeguards. What we are dealing with may not be perfectly right, but I am also saying that sometimes you people are not always the best either.

**Mr Ennett:** I agree, sir. Obviously, no profession is perfect and every group has its bad apples. We are not for a minute going to stand here before you today and say we do not have members among us whom we feel a degree of disrespect for from time to time.

There is never total unanimity within the industry on what is the proper practice, but what we are suggesting is if there are indeed legitimate concerns, if there are specific problems such as naming certain types of victims, please approach those specifically through legislation that deals directly with that subject instead of taking a blanket approach where you say, "This office will be able to determine on a day-by-day basis," or "Police will have to use their best judgement on a day-by-day basis," to determine what is released and what is not. We would rather you said: "This is an issue in society right now. We have support from the electorate to take steps to restrict the release of that information and deal specifically with that one area"—one at a time, just as the Young Offenders Act restricts us from reporting the names of young offenders. To us, that is a far more logical and relevant way to deal with legitimate societal concerns.

1550

**Mr O'Neil:** I guess another concern I have too is that just because people are charged, that does not mean they are going to be convicted and again, I am always concerned, because I have seen many cases too where it has been blown across the newspapers or radio stations or TV stations that such-and-such a person has been charged. A lot of people take for granted that because they have been charged, they are guilty. They assume that. Sometimes the damage that is done to an individual—and I know what you are going to say and everything else, but on the other hand—I hope it never happens to you. I hope you are never charged with something and subsequently proven innocent, because what you may go through, and I quote the Nelles case again, for a week or 10 days or months, I hope it never happens to you.

**Mr Clarke:** Mr O'Neil, I agree with you. I hope our police forces do as we hope they can do in every case and charge the people they have gathered information on who they feel committed these crimes, and that they have enough information before they lay that charge. I hope it is valid and I think we have to trust our police authorities to do that, but once they have—

**Mr H. O'Neil:** There is also a responsibility on you people to a certain—and I do not know where you draw the line.

**Mr Clarke:** Once a citizen has been removed from the street and he has lost his freedom and he is now incarcerated by the authorities of the state, someone should know that. Someone should know he has just been deprived of his freedoms. We think that information should

be available to the public, that X is no longer walking the street, that he is now behind bars and for this reason. So if people know that is wrong, they can come forward and say so.

**Mr H. O'Neil:** Well, I just hope the particular person that is done to—I guess I have some strong feeling that way. I wonder sometimes, and I know you certainly would not agree with it, whether this should be public until a person is guilty. I know that may be a really radical approach, but again, there are quite a few cases where people are charged where they are found not to be guilty too. Sometimes the label that is put on them can do a lot of harm, not only to the individual, but to family members and other people connected. Again I relate to the Nelles case.

**Mr Clarke:** I guess I am just saying, are we dealing with the problem or are we dealing with the messenger of the problem then? If the problem is that an incorrect charge has been laid, and I believe if we use the Nelles case as an example—actually, I guess the law did change as a result of that case—she can find relief, sue the crown. But that was perceived to be the problem at the time. In dealing with that case, what the media did with it in particular, it was the way the information was released and what information was released and how the case was proceeded with. I know if I were at the tail end of it I would be saying exactly what you are saying, no question.

**Mr Hinnen:** Mr O'Neil, one other point I would like to make is that when you talk about the fact that the truck driver may not be charged, there are laws right now that deal with libel and slander, that if that individual is not charged and you broadcast that information, you are leaving yourselves open.

**Mr H. O'Neil:** Why would you ask for the information beforehand then, before he has been charged?

**Mr Hinnen:** But the information we want is when a person is charged.

**Mr Clarke:** Because he has been charged; they have had a Justice of the Peace and he has been sworn. The charge was sworn while he is in custody. The JP visits cells on a Friday night.

**Mr H. O'Neil:** If I owned that radio station, I would be very careful about putting it out before—

**Mr Clarke:** Broadcasting anything where a charge is not sworn, and that is what we ask our people to do. That had been done in this case, but the decision was made still not to release the information until Monday morning in court and that is where it just became a frustration. The charge had been laid.

**Mr Hinnen:** The other point I would like to make is that when this law, when this particular piece of legislation was first drafted, it was not part of the intention to have this incorporated as part of the legislation, that the information would not be getting out to the media. I sat down on a couple of occasions in group sessions with Metro Toronto Police Chief Bill McCormack, who feels that this is really hindering relationships that the police are trying to build with the community. Quite frankly, we see ourselves



in this news industry as representing the community and trying to make sure it is made aware of what is happening in the community. I do not think we are looking for any special privileges here whatsoever. We are just trying to find out what the public really has an interest in knowing and what it has a right to know. We do not want to know anything more than what they have a right to know.

**Mr H. O'Neil:** Again, let me just use one other example. It may be a common one that I have gone into in one particular case, where an elderly person who was quite a good driver but was in his late 70s—but again, his licence was renewed—was charged with a very minor charge of failing to stop or something like that, and this was broadcast in the area—a very nice person. Again, it was put out over the radio stations and newspapers, and just the embarrassment something like that causes—when a person is charged with something, the right to be broadcast is there, but you know, sometimes a little bit of common sense is needed too with an elderly person or somebody. Again, how can you do it for one and not the other? But I guess it comes back to the comment you make, some sort of common sense on the side of the people who are running a radio station or running a local newspaper or something like that. It is not that common sense is not always used.

**Mr Hinnen:** Generally speaking, we think we have established a pretty good track record, as far as broadcasters are concerned, when it comes to showing common sense. One of the things we have found with this legislation is that it has taken that right away from us and it is giving it to the police officers, in this case, and preventing them from giving out any information. There is almost *carte blanche* right now that no information is given out whatsoever because that is the easiest thing to do. It is the safest thing to do, as opposed to giving out information and then possibly facing some type of trouble down the road.

We think there has to be some discussion on that, how we can best come to some agreement in terms of how this whole situation should be discussed and rectified. I know we have had discussion with our group that we are very prepared to sit down with members of this committee or any other committee to try to come up with ways that might better the relationship certainly between the police and the media and make better all other parts of the legislation that need to be looked at.

**Mr H. O'Neil:** Sorry, I took—

**The Chair:** That is okay. Because we have a little extra time this afternoon, I have allowed 15 minutes for each party to ask questions. If any other member wishes to ask questions beyond that, then I will establish a speakers' list after the rotation has been done. Margaret.

**Mrs Marland:** Thank you, Mr Chairman, I am probably in total disagreement with the former speaker. I have been in the Toronto area only 35 years, but I think the fact that whenever we have this discussion we bring up the Susan Nelles case tells us a great deal. I am not commenting on the Susan Nelles case. I am simply saying, is it not interesting, in the last 25, 30, maybe 35 years, that is the case that is brought up? And yet every day, when we turn on our television sets and radios, we probably hear a dozen

cases, new cases, and when we turn on the television again at 11 o'clock before we go to bed or we are just getting in the door, there is sometimes more news and there are more names than there were even at 6 o'clock.

I do not think I feel the same way about the United States' broadcasting models, but I think the business of broadcasting in radio and television is very responsible in Canada, and I am speaking about reporting. I think we have a very high standard, particularly in Ontario. I wish we had as high a standard or as large a responsibility to the public, in deciding what kind of entertainment and videos and movies the public saw, as the kind of responsibility I see our radio and television and print media demonstrating in Ontario today.

1600

I happen to think it is important that we know who has recently been put behind bars, because we may have missed somewhere along the way—in a week or 10 days of newscasts, we may have missed the crime or the event. Eventually we learn that somebody has been charged, but we may not have heard about it at the time that it happened. Very often I am sure the police find that when the charges have been laid and the information is out there on the street that that person is now behind bars, that is when they get more information coming forward. People start to remember that maybe they did see that person hanging around a service station or acting suspiciously in some other location.

So I think it is important that we know what is going on in our community, and I would go as far as—and I speak as a mother and I also was on the school board in the early 1970s, so I have experienced this business of whether or not we intrude upon children in their school communities, because they are captive in their school community. Do we get them alarmed and do we cause more problems by doing that? Personally, I think that depending how it is done—and there again, I have not had any bad experience about how it is done. I live in the ninth-largest city in Canada and we do not even have a daily newspaper, so we are very dependent in Mississauga on the Toronto media and the television, but I do not have any experience about it being badly handled in terms of the school community. I feel that to go into the schoolyards with the permission of the principals, which is the only way it would ever be done, means the judgement at that point is being made by the school principal. And I think that if that judgement is being made by the school principal, it is obviously done with good judgement.

I feel that if there are violent crimes taking place—and I said this when we had a representative from Metro Toronto Police in front of this committee two or three weeks ago when we dealt with this matter, and we also had one of the commissioners from the OPP. I said, "I want to know where these crimes are taking place, because I want to be able to protect myself and my family." Or if it is not where I live but where I know there are friends and so forth, it is just a ripple effect. If that particular park area has become unsafe because a child has been attacked or a woman has been attacked, the public has a right to know. How absurd it is if it gets to the point where we say, "Well, there was a



burglary somewhere in Mississauga South last night and they took thousands and thousands of dollars and it was from a private home." Suddenly people start thinking, "I wonder if it is my area that has suddenly been targeted as a break-and-enter area."

If you live next door to that person or on their street, you are going to know sooner or later where it is and where it was anyway. So I do not know what it is or who it is we are trying to protect by being very strict about this information coming forward. I think if we are going to say that it should not be used, then we have got to have a very good reason for not using it, because I feel the advantages outweigh the disadvantages. I think if we have irresponsible broadcasters who do not use the judgement and the tact and the sensitivity as well, if we have examples of that kind of thing, then we have an argument against releasing this information. But I am quite sure that the owners of the stations will let those people know and will let them go long before we would even hear about it, because that is not the model of broadcasting that has been going on in my experience. I think that if we are concerned about sensitivity we can almost go to the other extreme, where we become desensitized because there is no face on that crime, there is no person. I cannot identify with a mother whose daughter was just raped as I would if it were my daughter, because I am not going to know about that crime until that person is, what, found guilty? That is just not the way it works. I am sure that the police and everyone, particularly the police, are going to be looking very closely at that case which now has been approved by the Supreme Court and the appeal court of the young woman who has been given a right to sue Metropolitan Toronto Police for not warning her about the crime that went on when she was the fifth rape victim in one year. Was it 1986 to 1987? I think she was the fifth rape victim, whereas she might not have been a victim at all, nor might there have been number a three or four even, if that community had been warned about the first one or the second one.

So while I am not suggesting that we have to be alarmist with reporting crime—and I do not think that is what we are dealing with here—it is an awful thing to have to describe it as a public service, but in fact it is. It is something we have to know, and we have to know in order to protect ourselves. I really do commend the job that people within your organization do, and frankly, I wish that in some instances the print media would perhaps take a page, literally, out of your books. They seem to go much more for the gory photograph and the on-the-scene shot of worst kind than I ever see on television. Of course, on the radio I can conjure up my own photograph.

I was just going to say one other thing, Mr Chairman. I remember when—I cannot remember the year, but I think it was about 1976, and there was that terrible shooting at the high school in Brampton. I guess you were not in Brampton then, Carman. Margaret Wright was the teacher who was shot, and there were 12 students injured, and finally the young student with the shotgun shot himself. I went all the way to a tiny, tiny little village in the St John River Valley in New Brunswick to the funeral of Margaret Wright, and it took me four hours to find where she lived.

The service was in a 150-year-old church, and the church was just big enough to contain the family and a few relatives and myself.

When we came out of the church and went to the graveside, which was right in the churchyard beside that church, and the minister was giving the final prayers and it was, you know—there was dead silence, as you can imagine, way, way out in the country. I heard this funny whirring sound, and I could not figure out what it was. Finally I looked, and I could not believe what I saw, because there was this man kneeling down, hiding behind the tree, literally hiding with his camera. I was so mad and so protective of this family anyway because of this violent crime that I went over to him and I said, "What do you think you are doing?" He said, "Oh, I am just doing my job. I am just doing my job." I said, "Where are you from?" And he said, "Oh, I am from the Toronto Star."

I could not believe it. I thought, here is someone who is representing the Toronto media way out—far, far from any even medium-sized town—way, way out in the country in New Brunswick. And I thought, is that what reporting is all about? Needless to say, I wrote to the publisher and made a big fuss about it when I came home. Sure enough, the day that I came home, there on the front page was the photograph of Margaret Wright's husband at the grave with the casket and everything and all part of that scene. I thought, does the public really want to see that, and in seeing it, are they better protected? The answer to that is no.

But as to the kinds of crimes that we are talking about, that we need to know, that I think are part of the discussion today, the answer is yes.

1610

**Mr Hinnen:** Mrs Marland, I am not here to protect—I am certainly not trying to speak on behalf of the Toronto Star, but I do want to take a page out of our book and that is that we have a code of ethics that we abide by with the radio and television news directors. The code has 11 articles, and article number 4 reads: "Broadcast journalists will always display respect for the dignity, privacy and wellbeing of everyone with whom they deal and make every effort to ensure that the privacy of public persons is infringed only to the extent necessary to satisfy the public interest and accurately report the news."

So I think to a large extent we have addressed a lot of the concerns you have. I agree with you; I think there is a great need to know. Speaking as a citizen now, as opposed to a news director, we had a break-in down the street from us about three months ago. We were advised of the break-in through the Neighbourhood Watch program, a very successful program that relies on getting information such as this. As a result of that, we were able to take some precautions to try and make sure that we were not going to be victims when it came to a break-in, and as a result we took some precautions in our household. Without that information, we would not have been able to do so.

I think that again portrays the fact that it is very important to let the public know of events going on in their vicinity. "In their vicinity" could mean anything from in Toronto to in Ontario, possibly even to Canada, but certainly very



much in terms of what is going on in our own neighbourhoods. One of the things we wanted to be able to do was to make sure that we can provide that information as best we can as broadcasters.

**Mr Villeneuve:** Thank you, gentlemen, for your presentation. Certainly the electronic media are some that have a great deal of power and, I believe, you were the first to bring to the fore the fact that there was a problem with, as you see it, the legislation that was being brought forth.

Can you tell us, do you see a different way of handling from, say, the OPP standpoint as compared to that of a municipal police force? Can you give us a little bit of insight here? Is there a different interpretation and why is it different, if indeed it is?

**Mr Clarke:** I think, if I can speak first to this, that we have found that it varies from jurisdiction to jurisdiction, and that is the problem. There is no even application across the province. Each person interprets the guidelines to best fit his or her own situation. As to the incident Gary referred to on Highway 401, prior to 1 January that information was available, even though the OPP has been under the jurisdiction of that act for the last three years, but after 1 January when it came to apply to all municipalities, it appeared that the OPP were now trying to line themselves up with what municipal forces were going to be doing and they changed their method of releasing information. But I must say that it depends on each jurisdiction what information we are liable to get or not to get.

**Mr Villeneuve:** Well, certainly the public's appetite to know is tremendous and I think you are doing a remarkable job, because I am sure there are times when you sit in the newsroom and say, "Do we or do we not go with this?" It is always rather sad that news is 90% tragic, unhappy and what have you. We seem to think at times there is a little bit of good news here, but it never gets reported very much, or if it does it happens only as a fill-in. I think somewhere we will have to bring some uniformity to this legislation, because the public's appetite, as I said, is tremendous, and you people are there to fill it. If you do not do it, quite obviously someone else will do it.

**Mr Clarke:** I think that is exactly the point. If a problem is identified and perceived, then let's deal with that specific problem instead of having legislation that unfortunately from where we sit has created many more problems because of its uneven application throughout the province.

**Mr Villeneuve:** I think the message is clear, and certainly as we report to the Legislature we will take those things into consideration. Thank you.

**Mr Huget:** I would like to pick up just a little bit on a question by Mr O'Neil. I think we agreed, for example, that the name of a young rape victim should not be released, and I think your response was that all of us are ethical and sensitive in those areas and we can be relied upon to exercise those ethics. I think you have just mentioned the broadcast code of ethics, its 11-point program.

I guess what I am saying is, as there is sort of not general understanding of this privacy situation we are in and people applying it differently, do you see a problem in

the application of different ethical standards, for example? I think the same problem exists in terms of understanding the privacy issue. There may be another problem of not everyone having the same ethical standard in terms of releasing information to the public.

I am quite sure your ethics are very high, and by and large that goes for the majority of your people, but where that does not happen, the resulting damage can be quite severe. I guess what I am saying is, how do we standardize the ethics approach, and is there a way that your industry can police its own ethics satisfactorily to eliminate any of these potentially very damaging situations?

**Mr Clarke:** Sir, to respond to that, our code of ethics has now been adopted by the Canadian Association of Broadcasters in its code of standards that it has offered to the Canadian Radio-television and Telecommunications Commission. As a result, now, on each station's application for renewal of licence, each station owner will be asked if he or she abides by the code. The code includes the RTNDA code of ethics, so that if there is performance which does not meet the standards of that code, the complainant, the CRTC, can have that raised at licence renewal. So it is now, I would think, in the interests of the owners and general managers of the operations that their employees live within the restraints of the codes, obviously.

**Mr Hinnen:** Furthermore, the CAB, of course, represents all of the owners of broadcast outlets in this country. They have also established a standards council, and that standards council is to a large extent an ombudsman where people can go and apply if they have concerns relating to anything that is broadcast on radio and television. So it is being addressed, both by the owners and by an association such as ours, where we try to make sure that people are responsible.

If there are instances where, you know, we come to some agreement that maybe some areas need to be addressed, as in the case of a sexual assault victim, and maybe those things should not be broadcast, then maybe that should become a law. Those are things that need to be talked about and addressed. Right now, as has been mentioned by Gary, we cannot talk about the names of accused when it comes to young offenders, and we abide by that or face criminal prosecution. We are prepared to deal with the laws that are on the table, but this one becomes a very unworkable one because of its scope and because of the fact that it basically prevents us from getting information at source.

**Mr Huget:** Are there any other situations that you can see where it would be in the public's best interests to treat information the same as you would, for example, a young rape victim or something like that? What is your sense—are there other things that should be treated as sensitively? I am trying to get a handle on what you perceive as the limit.

**Mr Hinnen:** I do not think there are any rules or regulations when it comes to that, but I know that at our radio station we have a great hesitancy in mentioning suicide victims, for instance. The reason for that is that from a legal standpoint we may leave ourselves open if in fact we



go on the air and say somebody has committed suicide. So we try to be very careful, and oft-times do not mention it, because of the nature of that kind of a crime. But to suggest that there are others of any wider significance, I just cannot say at the moment.

**Mr Clarke:** I think suicide is a key one that, again, I think you would find a universal practice in dealing with. Usually it is not reported unless it is unfortunately done in a very public fashion and becomes suspected, and at that point you have to explain what has happened. But ordinarily suicide is just not dealt with.

I think sometimes what is forgotten is that we, too, are members of our communities and have to live by our communities' laws and concerns. They affect us just as much as they affect everybody else and we want to be dealt with as we would deal with others.

1620

**Mr Huget:** Last question, Mr Chairman.

Are you familiar with any broadcasting outlet that has had its licence revoked for violation of this code of ethics or any employee who has been removed from employment over violation of the employer's code of ethics?

**Mr Clarke:** There have been instances in the last two years before the CRTC where broadcasts that I would suppose would be more pejorative towards a particular ethnic group than actually breaking the law have caused severe reprimands from the commission and in one case, a reduction in the amount of broadcast advertising available to that company for a certain period of time. That is the only one I can think of specifically off the top of my head. But I think as broadcasters we recognize we are licensed to do our business and that licence can be attached or withdrawn by the regulator for cause.

**The Chair:** Thank you. Any further questions? Mr Cooper.

**Mr Cooper:** To continue on a little bit about what Mrs Marland was saying and what Bob Huget was saying, Mrs Marland was talking about generalities. As a block captain for Neighbourhood Watch in my area, I understand the importance of people knowing exactly what is going on in an area. That is why these Neighbourhood Watch areas are kept down to either half blocks or full blocks depending on the size, so you know the general area. But I do not see the necessity of actually telling which house was hit by the crime, whether it be a burglary or a fire, and I also do not see the purpose of naming names of accident victims.

You talk about being immediate and how you are the messengers, but I do not think I would like you to be the messenger if it was a family member or a close neighbour being killed in an accident. I think that is why—when you talk about competing between the newspapers, the newspapers usually have about a two-day follow-up, especially if you talk about things like motorcycle accidents. You can go and do the motorcycle accident but you cannot name names, because I think that should be protected and the family should be notified first. I do not think it should be seen on the 11 o'clock news.

What I am seeing now on the 6 o'clock and 11 o'clock news are close-ups, and sometimes you are getting licence

plate numbers in these pictures. I do not really think that is appropriate that these things should be coming across the news, especially if I am watching it and I know it is my next-door neighbour's licence plate number. I do not think that is the right way to inform.

**Mr Clarke:** Can I respond to that briefly? I think our code deals with this specifically, but I must admit it is broadcast practice again, in an agreement with the police forces, that we will not deal with victims of accidents until next-of-kin have been notified. That has to be a precondition to us receiving information, and that is the first question we do ask: "Have the next-of-kin been notified?" Because no, we do not see that as our role, either. It is not our role. It is our role, we feel, to inform the community as to the state and severity of the incident that has occurred, but it is not our role to advise people that they have lost a member of their family in a traffic accident. I will not rehash it right now, but I know that it is a major tenet of our business. That just is not done.

**Mr Hinnen:** In fact, I can also tell you that there were many occasions where we have learned of the name of the victim prior to the release by the police. We will call the police to confirm the name and they will tell us that the individual's family has not been notified, at which point we automatically withhold that information. That is our company policy. We do that; we withhold the information until next-of-kin have been notified.

**Mr Cooper:** Does that also include fires, residential fires, where you would not give the specific address if there was a fatality?

**Mr Hinnen:** If the victim's family had not been notified?

**Mr Cooper:** Yes.

**Mr Hinnen:** Very much so.

**Mr Clarke:** The exception to that—and it would have been interesting talking about it about three years ago when originally legislation like this was being looked at. If we showed an office tower where a shooting incident was taking place inside—now, there are perhaps 5,000 people; I do not know how many thousand people you can put in a busy office tower—what is our responsibility at that point? Do we explain what is going on and how many people are at risk? We do, I must admit, deal with these questions ethically in our meetings at all times to see how best we can respond to situations like that. I think, and I thank Margaret Marland for mentioning it, that our historic record has been a reasonably good one; a very good one, I would say from my biased point of view. Again, until we hear of specific incidents rather than hypotheses, we are questioning why a law is there to deal with it.

**Mr Cooper:** Basically what I was saying was that before this life, I used to be able to watch news. I was watching the American news occasionally, and you would actually see a bodybag coming up and maybe naming the victim and I am really glad that the Canadian TV is not following that example. I would not like to see it moving closer to that.

**Mr Clarke:** I do not see that happening.

**Mr Cooper:** Good.



**The Chair:** Any further questions? No? Thank you, gentlemen, for coming along and representing the Radio-Television News Directors Association, and for giving your brief here this afternoon. It is not very often the politicians get an opportunity to question the media, but this afternoon was one of those occasions. Thank you, gentlemen, for coming along.

**Mr Clarke:** Thank you.

**The Chair:** Is there any other business before the committee? Mr Frankford.

**Mr Frankford:** Back to the questions I raised about death certificates. I wonder if the researcher could provide some more information about that.

**The Chair:** You should have the memo in front of you about that. It is contained in the memo. It was given to all committee members this afternoon.

Any further business? If the members of committee could—sorry.

**Mr Frankford:** I do not know if this is it, but—

**The Chair:** It is not. No. On page 3 of the report from the legislative research service, the information I think Mr Frankford is looking for is contained on page 3.

Any further business before the committee? If the committee members could hold back for a couple of minutes on adjournment to discuss some arrangements about tomorrow. We adjourn until 10 o'clock in the morning.

The committee adjourned at 1627.



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## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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M-6 1991

M-6 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Tuesday 26 February 1991

## Journal des débats (Hansard)

Le mardi 26 février 1991

### Standing committee on the Legislative Assembly

Review of  
Freedom of Information and  
Protection of Privacy Act, 1987

### Comité permanent de l'Assemblée législative

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée

Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
Greffier : Douglas Arnott

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron

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LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday 26 February 1991

The committee met at 1006 in room 228.

REVIEW OF FREEDOM OF INFORMATION  
AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

CANADIAN BROADCASTING CORP

**The Chair:** I would like to call the committee to order and I would like to thank everybody for coming along here this morning. Our first witnesses are from the Canadian Broadcasting Corp. Gentlemen, you have 15 minutes to make your presentation and roughly 15 minutes for questions afterwards.

**Mr Henry:** My name is Daniel Henry. I am a lawyer with CBC, in-house. Gerry McAuliffe is a reporter for CBC radio, and Bill Kendrick is a producer at CBLT in Toronto, our news shows. We have given you our submission in writing. What I will do is highlight some parts of it briefly so we can leave more time for questions. You will notice that it is in very simple form on simple paper. It does not have any fancy three-ring binding. If we get more money in the budget today from the federal government, we will be glad to resubmit it in a more glossy form.

**Mrs MacKinnon:** You are not holding your breath, are you?

**Mr Henry:** If I can just take you through it, we have two or three major areas that we want to address. The first is cost. Costs, we feel, should not be a barrier to access to information. An example that Gerry ran into recently was that he asked for information and was told that it would cost him \$3,500 for the information; \$3,500 just to see if there was something there he was interested in. Nobody could ask for information and expect to receive it on that basis. Cost is a barrier to access to information in this case. So we have raised a few possibilities. In 1a, you see that we talk about just eliminating those search and review fees—severance review fees. In 1b, we refer you to the American legislation where representatives of the news media, among others, are given access to information free of search and review fees. They only pay for photocopying. And there are other organizations and categories of people that are covered. In fact, if you look at the bottom of 1b, it says that no duplication costs or search fees or review fees are charged if, quote, “disclosure is in the public interest because it is likely to contribute to public understanding of the operations...of government.” So there are real options there for you to eliminate fees in the public interest. There are a couple of suggestions as well on how waiving fees might be a more useful exercise.

Point two deals with something that is not covered by freedom of information legislation at the moment, and that is photocopying outside of the departments that seem to be covered, court documents specifically. If you go to a courthouse, the cost can be a dollar to photocopy a page. The suggestion is there should be a set photocopying rate for all information coming from government.

The third point is that civil servants, according to legislation, are not encouraged to release information. In fact, it is quite the opposite. Civil servants are discouraged from releasing information. And that, again, is a barrier to access to information. One point that is not made here but which could fit in this category is time limits. At the moment, you have got 30-day time frames. In the United States, the initial time frames are 10 days and 20 days. Some consideration, we think, should be given to reducing delay, because delay is being used as a tactic bureaucratically, we find, to keep information from the public.

The fourth point has to do with having the operation of the Legislature not exempt from the application of the freedom of information legislation. It is fairly straightforward; we do not see why it should be exempt, but at the moment it is exempt.

The fifth and sixth points deal with the police, and I would just like to quote to you from Mrs Gigantes, in Hansard, from June 1987 when there was a discussion on this bill. On page 1169 of 8 June 1987, she says: “In my view, if ever there is a reason to have freedom of information in a democratic society, it is to make sure that such agencies as law enforcement agencies, defence agencies, security agencies and police agencies are subject to the control of the public. They cannot be subject to the control of the public unless the public has information about their activities.” That is the philosophy that we are bringing to bear in this general discussion.

So there are two things that we address. One is the compelling public interest segment of the legislation. What Mrs Gigantes was saying at the time was that section 23 of the act should be amended so that it can be argued that there is a compelling public interest to have access to law enforcement records. That is not there at the moment as an argument, and it should be.

The second thing is this whole debate that you have been discussing, that relates mostly to the municipal freedom of information act but also to the provincial act because it is the same language that affects the OPP as well as the other forces. What has happened is the new interpretation has come into being, and if I understand the debate correctly, what has happened is there was a history of a flow of information to the public. There were no problems really. There were no problems. There was no call for legislation to clamp down on that information. The new



freedom of information act came in in the provincial context; there were no problems. Then the municipal one came in and different police forces—a few police forces—started to interpret it in a certain way. And they said, “Excuse me, help us. We have no choice. The freedom of information act forces us into these interpretations. We don’t even want these interpretations. We are forced into it.” So they then came out with these interpretations, caused great difficulties. If you want to discuss these with us, there are a few examples attached to the back of this where we have not been given access to information that we think is critical. And our basic point is that we should go back to the way we were, to allow the flow of information so that we can get direct access to sources of information other than the police. And you cannot get access to direct sources of information other than the police unless you have their names. We are not asking for their life histories. What we are asking is that we get their names, not to provide the police with an excuse not to give us their identities, and not to provide them with a virtual veto over public access to very important information about what is happening in the community.

Just one example shows you how ridiculous we think it is. A policeman in Sudbury shoots a man dead in January of this year. Shoots a man dead. They will not tell us who the policeman is, and they will not tell us who the person they shot is. The information came out through neighbours. The police should be giving us that information. They should give us the name of the officer, and they should give us the person who was shot dead so that we can investigate it in the public interest and let everyone know what is going on.

The one other thing that we have given you—and then I will open this up to questions—are occurrence reports. We have given you one page of typical occurrence reports from a year ago and from today. If you look at the one from 14 February 1990, you will see a number of robberies, and you will see people identified. The police used to hand these out in Toronto every day, and we would be able, at our discretion, to find these people, talk to them on or off the record to find out what was going on in the community, and then do stories on it. Today we get pages like the one you have from 25 February 1991. A 27-year-old male reports that on 23 February, such and such happened. You cannot follow that up. These are real problems, and it means a decrease in coverage. If you want to ask more about the coverage, I have my two friends from radio and television here to talk about that further. With that said, we are happy to take questions.

**The Chair:** Sorry, I was busy reading this. Thank you very much. Mr O’Neil.

**Mr H. O’Neil:** You mentioned the civil service. Are you saying that as far as freedom of information goes, they are trying to delay you or put you off in every circumstance, or are there just certain areas where you find that?

**Mr McAuliffe:** I think it varies from ministry to ministry and from issue to issue. I have had requests going to the Ministry of Correctional Services where I had full documentation probably within the space of two weeks. I have

had applications involving the Ontario Human Rights Commission that took us over a year to resolve and other issues involving the Deputy Minister of Communications which took almost a year to resolve and which resulted in the end in the destruction of the documents that we were seeking. So it depends so much on the issue and the individual you are dealing with. One of the great difficulties that arises sometimes, of course, is the role of the freedom of information co-ordinator within a ministry, because one of the difficulties is they are not quite as independent, I think, as they should be. The responsibility is theirs to produce the documents or comply with what the provisions of the act are. However, they are also subject to the instructions of their deputy ministers.

So while a freedom of information co-ordinator may, in her view or his view, determine that we do have full access to these documents, if the boss comes along and says, “You are not giving them to them,” as we have had happen in the Silcox case, then it creates enormous problems and considerable delays.

**Mr Henry:** It is interesting, in the case that Gerry was referring to, that when he asked for information the bureaucrats gave us the least amount of information that could possibly fit the description, to the point of giving us the fronts of American Express receipts but not photocopying the backs. And when we found out that there was information on the backs that we needed—that was months later—the time period for appealing had passed. We learned when we asked, that the documents were destroyed.

**Mr McAuliffe:** How can you have an act that provides absolutely no disciplinary or punitive measures for people who do not comply with it? As I understand this act, there is a punitive process to deal with people who breach people’s privacy. I quite agree with that. But surely if you are going to have provisions in the act to deal with breaches of privacy, there should also be provisions in the act to deal with bureaucrats who either lie about the existence of documents or destroy them. If you have nothing to fear, why not screw the system around?

**Mr Kendrick:** Because, in fact, fear works in the reverse. They are more afraid about releasing something that would violate the privacy act, since there is no provision for any sanctions if they do not provide the information. So the safest thing for someone to do is to not release the information. Therefore, they cannot violate the privacy act and there is nothing to say they have to release it under the freedom of information.

**Mr H. O’Neil:** I do not disagree with you at all. If it is there and it is public business and it is public money that is being used, I guess it is just knowing when it infringes upon an individual’s privacy in certain cases, and it may not in the case you are talking about. And I guess it is maybe the slant that—you know, is there a particular slant? I know, Mr McAuliffe, that you talk, too, about Rambo journalism and how some reporters use certain things and slant it a certain way. You might have some comments on that. I know you spoke on that on the weekend.

**Mr McAuliffe:** Yes. You see, I have no problem with the privacy provisions. Let me give you just one example



in the Silcox case. I had no difficulty with the ministry removing the names of the individuals that, say, were entertained over a \$700 supper. What I do think we have a right to is the nature of the government business that was involved. So what we ended up with was a situation where a bureaucrat withheld all the information, denied it existed. By the time we discovered by other means that it existed, the appeal period had expired. Fortunately, I was able to write to the commissioner and ask her in light of these circumstances to reopen it. And she did. I have not run into any situations yet where I disagreed with the commissioner or a ministry on the withholding of private information. In one case—as a matter of fact, in the human rights commission case—where a certain individual was put into a job, we requested that individual's qualifications. The human rights commission insisted we did not have a right to it. However, the freedom of information commissioner ruled in the end that public interest overrode the right to privacy and we got it.

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So I am having no difficulty with the process that exists in seeking that information out and the protection of people's privacy. What needs to be done is we do not need a 30-day period to produce the documents to begin with—which, by the way, can become automatically 90 days at the end of the 30 because they can just write you a letter and say we need an extra 60 days. That needs to be shortened significantly. The search fees are astronomical. In the case of the Ministry of Culture and Communications, they sent us a bill for \$3,650, claiming that it was going to take a file clerk five and a half weeks working non-stop to obtain these documents and then it was going to take 2,200 pages of photocopying to produce them for us. The whole purpose of that bill, in my view, was to discourage us from getting the information. They might as well have sent us a bill for \$8 million, because with the CBC budget these days, going to them and asking for \$3,500 to pay for government documents is absurd. So the process becomes a licence to obstruct you from getting the information you are seeking, and I do not think that is what the intent of the legislation is all about.

**Mr Henry:** And an interesting point: I went to a seminar recently on the freedom of information act and some people were saying how you get around the legislation. One of the suggestions was that there is two hours' free search time, so instead of making one application—Gerry was silly enough to actually ask for what he wanted. He said, "I would like the following things." Well, that is not the way you do it. What you have to do is to break it up into two-hour chunks and put in 20 applications, and you get it all free. This is something we have discovered. Is that the way the law should work? I think not.

**Mr H. O'Neil:** I know that you gave us two examples there of news articles. One was where that chap was found in the bush and had been there for a while. What about in a case like that, not that particular example, but what if it had been a suicide? Would you have carried that story on a suicide? What is your policy in that area? In other words, what we were talking about: releasing the name of a rape

victim or a suicide victim or other such examples as that. What is the policy that you would use?

**Mr Kendrick:** The policy that we have at CBC television is very clear on suicides and sexual assault cases. In sexual assault we do not report the names of victims. In the case of suicides, the name of a victim would be reported if the stature of that individual was such that who the person was became a major part of the story. Basically, we do not report on suicides unless they have compelling public interest.

**Mr Henry:** The other thing to note is that the distinction we are talking about is access to information, as opposed to publication. We understand that there may be concerns with publishing these things and that is why our policy is as it is. But we are not asking you to amend the legislation to get us to publish; we are asking you to give us the information so that we can contact the people to get more information to make a valid determination about whether there is something to publish.

**Mr McAuliffe:** I can tell you that I have had numerous situations in my 32 years as a reporter involving crime stories where we have run into circumstances where the family has asked us not to identify certain people. I would say probably in 95% of those instances the request has been granted. We often run into situations where the interest of the family or the interest of the individual far outweighs the gravity of the story. The only suicide that I can think of that has ever run in recent years was the guy who jumped through the glass roof of the Eaton Centre. And the only reason for that—it was not known until the next day, actually, that he had committed suicide. When that incident first happened, it was thought that he was a window cleaner who had fallen off the scaffolding and gone through the window. It was only discovered the next day that it was a suicide.

**Mr H. O'Neil:** Yesterday we had the radio and TV people here, and I guess what we are looking for is responsible people in the journalism field—that if there is information out there, it should be given to them if it involves the public or public money or things like that. But there are other areas which I sometimes wonder on, as I say. Maybe Mr McAuliffe would like to comment on this, but I sometimes wonder when it comes to freedom of the press and the slant of stories and sometimes their content, where there is a lot of competition out there among reporters to have their stories run, whether it be on the CBC or whether it be in newspapers—again, I understand you touched on this over the weekend, about some Ramboism among journalists. I sometimes relate to maybe some of the London, England papers and the tabloids and I wonder if we are not leaning a little bit towards this in some of our papers. How do you—again, freedom of information and protection of individuals where they need to be protected. I wonder if I could have your comments on that.

**Mr McAuliffe:** I think that Canadian news organizations are rather tame compared to many news organizations, for example, in Britain and some parts of the US. By the way, the issue that I raised on the weekend with respect to Rambo journalism was some criticism I had levelled at



the Globe and Mail over their handling of the Don Getty story, which is sort of totally different than the issues that we are trying to address here today. But trying to respond to your request, the issue boils down to a matter of training, good taste and good judgement. And the point that I was making on the weekend is that there is a need for news organizations to spend larger amounts of money in the training of people. It is like any practice, whether it is journalism, real estate, law, medicine—whatever the case happens to be. The greater the amount of money you invest in the training and education of people, I think, the more responsible and the higher level of professional conduct you get in the end. It is an issue that is different than this, but I see the point that you are raising. It is the point that I was trying to make on the weekend, which is that, yes, we have a great need to invest considerably more in the development of journalists in the country.

**Mr H. O'Neil:** Again, I may be subjecting myself, because the power of the press is very powerful, but I even wonder with some reporters—and I guess it sort of raises the wrath of some politicians, because a lot of media people are also very critical of MPPs or government in general. I sometimes wonder, when they have been around a while, whether that cynicism grows within them, where they are always very critical.

**Mrs Marland:** Why would they not be?

**Mr H. O'Neil:** But I often wonder when, in certain areas—and it is a very difficult job in the media, and we sometimes build up certain relationships. But I find that maybe some of the feeling within politicians is because of the continued criticism they get from people within the media who are always talking about the bad things. Whether it be an ordinary MPP or a parliamentary assistant or a cabinet minister, they fail to look at the amount of hours that these people put in—how they put in a lot of time up here, how they go back into their ridings and are working on the weekends when they are back there, and how they really work not only here at Queen's Park to help people but also work very hard in their ridings to do little things that the press never points out. And maybe that is some of our problem there. But you know yourself—

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**Mr McAuliffe:** I think your criticism is a valid one. One thing we do not run is a perfect business by any stretch of the imagination—

**Mr H. O'Neil:** As we do not.

**Mr McAuliffe:** So your criticism is justified. But let me take it the one step beyond that as well. One of the difficulties as a journalist is this: The stories that people remember are the critical ones. If I were to do a story tomorrow on what a great member Hugh O'Neil is and how he busts his ass here and down in the Trenton area for his constituents, it is not to say that it is not a valid story, but it is often not the story that people remember in that day's news.

**Mr H. O'Neil:** Or the one that your editors will print. And yet I sometimes wonder, and maybe we are getting off the subject a little bit, but I wonder if people are not

looking for a little more of that rather than a robbery victim or somebody like that. I just—

**The Chair:** Thank you, Mr O'Neil. I think we have allowed a little more time than normal, so the remaining two parties have about 15 minutes each. We are running a little behind time. You know I am fairly flexible; however—

**Mr H. O'Neil:** We do not get a chance very much—

**Mr Villeneuve:** The shoe is on the other foot.

**The Chair:** It is very seldom that the politicians get to question the media, as I indicated last night. However, we are in a very tight time frame today. Mrs Marland?

**Mrs Marland:** Gerry, I was kind of smiling when you were talking about the Ontario Human Rights Commission case, because I think you and I were both deeply involved in that issue at the time, and I shared your frustration from another purview, really. I am interested in what you were saying about the fact that you deal with the privacy—what is the term for that privacy person in each ministry?

**Mr McAuliffe:** The freedom of information co-ordinator.

**Mrs Marland:** Co-ordinator.

**Mr McAuliffe:** Yes.

**Mrs Marland:** So the person that you have to deal with in each ministry is an employee of that ministry and not of the commission.

**Mr McAuliffe:** That is right.

**Mrs Marland:** So maybe that is where the problem is.

**Mr McAuliffe:** It may well be. The problem with that is, how then do you appeal, before the privacy commissioner, what a commission employee might have decided to release or not to release within a respective ministry? I do not know—

**Mrs Marland:** Well, maybe that is a better gambit than this business of an employee within the ministry saying yes and then finding that his or her superior, whether it is the assistant deputy minister or the deputy minister, reverses it.

**Mr McAuliffe:** In fairness, on the Silcox stuff, if I implied that the freedom of information co-ordinator was prepared to release stuff that Silcox was not, I should be very careful how I phrase that. What I can tell you is that the freedom of information co-ordinator had to have known that the documents that we sought existed.

**Mrs Marland:** Right.

**Mr McAuliffe:** The way it is supposed to work is that you send the documents with the part that is a privacy breach blacked out. What they did in this case was to send us only part of the document, which is wrong. You do not know then what it is that is missing. And I do not believe in that case that that was a decision made by the freedom of information co-ordinator, because I had dealt with her on previous occasions on other matters and had not run into that.

**Mrs Marland:** Which comes to the fact that—if we were in the Legislature and I used the word “misleading,” I would be in trouble. But that kind of action is totally misleading. If you are making a request for certain information and you are only given half of it, while the other



exists, it is totally misleading. And if there is some way of you knowing that, as you say, and if it is the privacy thing and it can be blacked out the way it is with the normal process, then you can accept it.

I think that freedom of information, for the public to have access to as much as possible in government, is a very important step, and if it is not working well for people in your profession, then as far as I am concerned it is not working. Because you are the people that are doing it for a living. I think—and I said this yesterday to the television people—that for the most part everybody in Ontario acts very professionally. I do not feel the same about the United States particularly. But I think we have a very high standard of journalism and reporting in Ontario in all media forms. I think it is interesting that you brought the point up this morning that there is no penalty on that side, on the freedom of information side.

**Mr McAuliffe:** Is it not amazing that a civil servant could destroy all documents that exist that relate to \$65,000 worth of spending of public funds?

**Mrs Marland:** Well, it is outrageous. It is outrageous. And the irony is that we are required—I do not know how many years we are required to keep our files; I think it is 10 or something. Seven, is it? But whatever applies should apply to all documents, not just the expense chits of an individual or the hotel bills.

**Mr McAuliffe:** Precisely.

**Mrs Marland:** It does not matter what the document is. It is a matter of following the flow of the taxpayer's dollar in this province.

**Mr McAuliffe:** We asked for other documents in that case, by the way—they were not financial documents—that we were never given until the second appeal. We asked for itineraries, for example, on his Asia-Pacific Rim trip, and it was denied that those documents even existed. It was only months later that we discovered they did exist. We eventually got them.

**Mrs Marland:** So it was very selective.

**Mr McAuliffe:** Oh, well, in that whole process, as far as I was concerned, the ministry did everything it could to deny us as much as it could. And that is not what this bill is about.

**Mrs Marland:** It is not what good government is about either, I would suggest, in the interests of the public. But I also think that when this committee looks at our report on this legislation, we have to look at the fact that—I remember with the OHRC that it took a year, I think, for you to get that decision.

**Mr McAuliffe:** Yes.

**Mrs Marland:** And that is almost a deterrent. You talk about the financial cost as a deterrent. But a year later, perhaps that person has died, perhaps the issue has totally gone away, or whatever it is. If it is really going to serve the interests of the public, then it has got to be more accessible than a year later. And if it means that it is a staffing thing, or whatever it is, I think that is a provision that must be made.

One of the things that we talked about yesterday—I guess maybe we do not have time to get into it, to be fair, do we?

**The Chair:** Your colleague has a question.

**Mrs Marland:** Oh, do you have a question?

**Mr Villeneuve:** Gerry, you have been around this business for a long time. Prior to this legislation we talked and heard of plain brown envelopes and all this kind of stuff. What were your sources of information? Was it easier to get information prior to this? I mean, is this freedom of information or is this privacy?

**Mr McAuliffe:** No, it is a very important bill. It has opened the door to stuff that I could not get before. Absolutely no question about that at all. The problems with the bill are process and, as Danny points out, interpretation. The bill is not clear and specific enough, in areas like the releasing of police information, that people clearly understand.

**Mr Villeneuve:** We heard yesterday that some—

**Mr McAuliffe:** Excuse me, one other thing. One of the very key points is that the \$30-an-hour rate that Ontario charges is just staggering. Because when you have a civil servant tell you it is going to take a file clerk who is paid \$12 an hour five and a half weeks to get the documents, and they want \$30 an hour from me to get them, that ends the request.

**Mr Villeneuve:** There is method to their madness in that one as well.

**Mr McAuliffe:** That is right. When I go down to a courthouse and I need a judge's decision that is 97 pages long, and I have to pay \$1.25 a page to get it, it makes it prohibitive. Why should there not be a single photocopy fee for all government documents?

**Mr Villeneuve:** Interpretation by different police forces seems to leave a great deal to be desired as well. Maybe you could comment on that.

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**Mr McAuliffe:** I think Danny and Bill are probably better equipped to deal with that than I am.

**Mr Kendrick:** Well, there is a real inconsistency across the entire province as to how this is being applied and, frankly, there is some inconsistency within police forces. What we have created here is a situation where the bureaucracy of the police department decides not to release information, and our police reporters then have to go inside the department to their various contacts. Police officers find themselves in difficult situations. They recognize the reputation of the reporter they are dealing with, and they know that reporter is an excellent journalist and is not going to use this information in a sensational way. Therefore the policeman figures, "Well, I will help that reporter out and give him that information," at the same time that his or her department is refusing to release it.

I think an example of where police refusal to release information to the media is definitely not in the public interest was a situation that occurred here in Toronto, in High Park, just this month—17 February, just a week ago. All that was released was that a 35-year-old male was



walking through High Park when he was approached by 10 men with baseball bats, and he was beaten. That was all the information that was released on the major occurrence form. As a result, other than one newspaper story which occurred two days later, there was virtually no coverage of this story. We have no idea whether the victim was a victim of gay-bashing, whether the victim was a victim of some racial attack. The people of Toronto are unaware that that kind of event is taking place. But if we are unable to find out information—and it is not to say that we see that we do not have a name and we stop right there. But we are certainly frustrated in our ability to communicate to the people of Toronto events that are happening in their community, that they have the right to know about.

**Mrs Marland:** Or that the park is unsafe.

**Mr Kendrick:** Well, we could be accused by Mr O'Neil of being sensational with that type of story, by saying that the park is unsafe. We are not saying the park is unsafe. What we are saying is that these events have taken place at that park, and that here is the information that allows you to make a decision as to whether or not you want to go into that park. If that was a racially motivated incident and I happen to be of that racial background, I am not sure that I want to go into—

**Mr H. O'Neil:** Did they give any reasons for not releasing that information?

**Mr Kendrick:** Simply that the victim did not want his name released. Now, again—

**Mr H. O'Neil:** I do not like to interrupt, but could that be that if his name was released, maybe one of those 10 people that attacked him would know where to get hold of him?

**Mr Kendrick:** That is a possibility.

**Mr H. O'Neil:** I do not know.

**Mr Kendrick:** The problem that is created, though, sir, is that the police are put in a situation of having to make those kinds of decisions. And they do not want to. The police themselves will tell you, "We really do not want to be involved in this." They would prefer to leave it up to the discretion of the media. We do not want anything further to happen to this gentleman. However, by not being able to properly follow this story up and make our own case to the individual—I mean, we do not know what the police said to this individual. There are circumstances under which the police, in the way they present this, can in fact convince the individual not to have his or her name released. We are not necessarily going to run out and say, "So-and-so, a gay person, was attacked." We use discretion in those cases. We are not full of Rambo journalists.

**Mr Henry:** I think one thing can be pointed out on that story, if I may, is that you might ask, why did CBC not report it? There is a real problem in electronic journalism, and that is making your stories relevant to people. Unless you are talking to real people and getting them to tell their stories, you cannot really hold much attention. And there is a limit to how many just dead-copy stories you can do about "an incident took place somewhere." So you have to have access to the person or to the people who were there,

just to talk to them. Maybe they will convince us not to put their name in, but at least one lead will go to another, and maybe you will find someone who will talk to you. As a result, we did not do that story, and we think it is a story that should have been done, possibly.

**The Chair:** Mrs Marland, we still have two minutes.

**Mrs Marland:** Well, that was leading into the area that I wanted to just ask you about quickly. We have had the commissioner of the OPP here, and we have had a representative from the Metro Toronto force, and they are actually saying there is no problem now; they now know what they are doing. They have received the new guidelines—I guess that was not the correct word—from the Solicitor General about how much they can release, and there is no problem because they are all doing the same thing. And yet I know that Chief Jim Harding in Halton is doing something different. And I also happen to know what a very shrewd policeman Jim Harding is, because I knew him when he was a police officer in Peel. And nobody is going to use better judgement than Chief Jim Harding. He is a superior police chief in this province. And I think this has got to be one big ridiculous mess in the province, where we do not have any uniformity. If the idea is that everybody has got to do the same thing, then let everybody do the same thing as far as the police forces across the province, with both acts.

But the other part is, as a representative of the public and a member of the public, I am very determined to make sure that as much information as possible can get out so that, as we said yesterday, we can warn our kids, our relatives, our women who might be at risk in a certain neighbourhood, anyone who might be walking through High Park after an incident like that. And it is very significant that you brought these two occurrence sheets to show us the difference. I am one of those people who think that we should get as much information as we can in terms of the suspects, so we all know who we are looking for, for God's sake. If there is somebody with that description—we got all hyper a couple of years ago about putting down whether they were black, yellow, green or white. How ridiculous can we get with this kind of stuff? If people are committing crimes, especially personal crimes, acts of violence against other human beings, they deserve to have as much information out for the public as they possibly can. And we depend on you to get that information out.

**Mr Henry:** If I could just answer you briefly. If you could take a look at the news report that we have given you at the back of our brief, from the Windsor Star, 15 February, here is an incident where the Ontario Provincial Police did not release the name of a gunman who for 24 hours was holding the OPP at bay. A gunman. And the name was released in this report because neighbours gave it to us. The question for us is, should a person have a veto, as the individual's family in this case did, or the individual? Should they have a virtual veto over whether the public can understand who that person is? Because the public wants to know: Who is that gunman? Is he somebody who is rampaging through the countryside? Could he be anybody? What led him to go there? Should we be changing



our social agencies to accommodate people like that? Is there a real problem? You have to have the name to be able to make that—

**Mrs Marland:** Is he someone who everybody knew had a mental disorder?

**Mr McAuliffe:** Well, he was arrested on four or five criminal charges.

**The Chair:** Thank you, Margaret. I have allowed a little extra lead time here because we are discussing a very important topic. We have three speakers, Mr Huget, Mr Cooper and Mr Owens, and so about five minutes each.

**Mr Huget:** In one of your suggestions—I believe it is number six—you request that the act be amended for the police to provide information which identifies victims of crime, and we have been talking about some of that, but also “witnesses to crime, witnesses to events to which the police respond, those being investigated by the police, and those accused of crime.” That goes a little bit further, I think, than talking about some of the issues we have been talking about this morning.

You go on to say that release of this information—and I want to deal specifically with witnesses and people being actively investigated by the police—that these are areas that should not be a matter of police discretion in terms of releasing that information. I guess my question to you is, why not?

**Mr Henry:** For the reasons that we have given. Witnesses to an event will tell us from a variety of points of view what really happened. And the community wants to know, if somebody is murdered on the street, what really happened. They do not want to hear an official police version in a paragraph of what happened. They want to hear many different points of view, and the more points of view we are subjected to, the more truth we can bring to bear in our report of the event, which may be very different from the police report. That is why the more access to direct sources of information, the better the quality of information.

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**Mr Huget:** Do you not feel that in some situations, identifying witnesses would indeed cause them major problems, if not physical harm?

**Mr Henry:** Clearly there are a variety of concerns that have to be taken into account in publication. We are asking for access to them, not necessarily an absolute guarantee that we will publish their names as soon as we get them. In fact, as we have attempted to demonstrate, in the cases of victims and witnesses, we are very sensitive to their concerns. If somebody says they are afraid of harm befalling them, we are very concerned about that. In fact, I have indicated that the only exceptions to this would be where there is a reasonable apprehension of harm to the person identified. So if the police in this scenario think the witness will be subject to harm, we would, in that case, understand not being given the name by the police.

**Mr McAuliffe:** I have had calls from the police on stories that I have done where they have provided us with the names of witnesses after they were finished with them, we have gone out and interviewed them and then the police

have called us the next day, saying, “We are really interested in that, because they never told us that”—where we ended up getting more information out of the respective police witnesses than the police themselves did.

**Mr Huget:** I am just curious in that many witnesses, I think, do not want to be identified in terms of the public. And I guess what you are saying then is that you feel you have a better mechanism of exercising discretion than the police may have in order to release those names?

**Mr McAuliffe:** That is right.

**Mr Henry:** I do not think necessarily that we are saying we have a better mechanism. The police are able to bring a number of considerations to bear that may be very worthy, but there should not be a total check. It should not be up to a single police officer to consider the entire public interest. Other members of the public in a democracy, members of the media, should have the ability to bring the same considerations to bear.

**Mr Huget:** You also say that people who are being investigated by the police should be a matter of public record, or at least you should have access to that. I wonder what your views are in terms of someone who may be being investigated and no charges are ever laid—one of your perhaps minority Rambo reporters goes on a mission to identify this person and serious harm is done to that individual, and no charges are ever laid. What responsibility would you have?

**Mr Henry:** Well, there are laws of defamation, and there are limits to what you can say about someone. Certainly, as a lawyer who on a daily basis responds to journalists asking what they can publish about people in those circumstances, I know that not all the information we get is published. But there are circumstances when companies are being investigated for violations of certain legislation, or individuals—not necessarily for murder—are being investigated, where there is a public interest in that. There might be occasions when the police are harassing an individual, where they are investigating him over a six-month period. What if it is a major public figure who is being investigated, whose life is being hampered by the police? Just knowing who the person is—and that is what we are talking about—clues us in and allows us to get the information, and it helps us to make the decisions.

**Mr Huget:** And you see no possibility of that information, in an investigation where no charges are laid and nothing is being actively contemplated in terms of charges, you see no possibility for that information to be misused by anyone?

**Mr Kendrick:** Oh, I do not think we are arguing that it cannot be misused. We would be naïve to suggest that it cannot be misused. But as Danny indicated, there are defamation laws in this country that apply specifically to that, a specific law that deals with a specific problem, as opposed to the problem created here, which is a much broader stroke. There also has to be—I cannot speak for all journalistic institutions, but in terms of the CBC, we have some very rigorous journalistic policies that must be satisfied before we would ever go to air with any story about someone being investigated. Simply because we have the



information that the individual is being investigated does not necessarily mean that we run to air with this. We need double and triple sourcing, we need confirmation, and that goes back to the problem that if the only source of information on these kinds of stories is the police, then we are at the police department's agenda. And the department has some very clear ideas on when it wants to release information and when it does not want to release information.

**Mr Henry:** You will find, if you follow the media, that there are many instances now where we are able to find out that a company or a person is being investigated by the police in a variety of circumstances, and we do publish it. But it is in the public interest—if somebody is defrauding hundreds of people through mailing campaigns and the police have not yet charged them because they are collecting the evidence, we want to get that information to the public right away so that fewer people are defrauded. We have to do it carefully, but there is a public interest in getting that out.

**Mr McAuliffe:** There is another criterion, though. The police cannot really have it both ways, when they decide they are going to refuse to release everything this morning and then at 11 o'clock call a press conference to announce that they had a raid on a house of prostitution last night and they arrested a very prominent lawyer and, "Here is his name, and we have charged the owner," and then announce a week later, "We are going to withdraw the charges because we made a mistake." I mean, the existing system is unfair, every way.

**Mr Cooper:** I would like to commend most Canadian journalists as being responsible and sensitive. What I am looking for is maybe some middle ground here. I understand when something happens that there is a need to know the location and the incident and some of the background to it, and I understand the police are kind of reluctant to release that. But what you are also saying, on the other hand, is that once everything is solved and you actually have a body—I do not understand the need to know. I guess what I am saying here is that the reason I am not in journalism is because I am not curious. I do not feel I need to know.

What I want to know is if there is any middle ground where you can protect, say, the victims, especially in these purse-snatchings where they may not want somebody coming and bothering them. A lot of times these are older women and they are usually on their own and they maybe do not want to be bothered. As it is, they have been traumatized, and now the police are investigating and things like this.

Do you feel that you have to go and investigate, to follow up on that, or do you feel that maybe you just have report that there were six incidents of purse-snatching in a certain block, in an area, just to warn the people? Is there a middle ground?

**Mr Kendrick:** Well, the difficulty that scenario somewhat places us in is that if we merely take what the police tell us and report it, we put ourselves in jeopardy of reporting irresponsibly and in not finding out all of the information about something. This then puts us in the situation that

Mr Huget suggests, that we just run off and put that kind of information on the air. Our ability to talk to victims of crimes, to witnesses of crime, allows us to do a much broader story and give a better context to events that are taking place. Again, your question somewhat pre-supposes that we get a name, we broadcast a name. That is not the way it works. But we need the name to be able to find out more information about it.

**Mr McAuliffe:** If an old person does not want to be interviewed, you are certainly not going to push it. On the other hand, we have had instances of victims of purse-snatchings where their old-age pension has been stolen and they have no money now for the next four weeks. As a result of their identity in the press, somebody has sent them a cheque for \$100 or a \$1,000 or—do you know what I mean? Again, it is all over the map, and it really boils down to the discretion of the respective news organizations involved and how well they treat these situations when they develop.

**Mr Henry:** I think what we are saying is there is a middle ground. But that is not the issue. The issue is who judges where the middle ground should be.

**Mr Cooper:** Should the middle ground be the victim, whether or not they want to be interviewed?

**Mr Henry:** Of course.

**Mr Cooper:** Should they be able to withhold their name from the police report? Would that be a middle ground?

**Mr Henry:** I think it depends. As in anything, it depends on who the victim is and what the crime is and what the public interest is. And there are a lot of considerations that have to be brought to bear, so that you cannot give a definitive answer. The question is not whether there are these considerations, but who should decide.

If you say to the police, "You decide," then what you are doing is stopping a whole bunch of other people from making the same decision. If you say to the police, "You must give it out, but all you other guys decide," then that is how democracy is supposed to work; we work it out. And there are penalties for organizations that put out information that the public is offended at seeing. So there are real restrictions on what the media want to put out because they get the flak from the community directly.

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**Mr Cooper:** What I am saying along this line, too, is that there are also people who are out looking for media attention, and they do certain things to try and get their names put in the press. Maybe that is a reason for withholding names, so people do not go out and get the media attention.

**Mr Henry:** Well, they can always come forward with or without police help.

**Mr Cooper:** Okay. Thank you.

**Mr Owens:** Mr McAuliffe, here with my cold this morning I could introduce myself as Deep Throat. You made a comment about some of the difficulties that you encountered with respect to your investigation of the former deputy over at Culture. Could you maybe give us your list



of the top three or four or five ministries that you had the most difficulty with, and how they have responded to your requests for information?

**Mr McAuliffe:** Well, the answer to that is no, because I have not made enough requests of a large number of ministries to be able to rate them. The two biggest difficulties I have had so far were with fairly big stories. They involved the Ontario Human Rights Commission and the Ministry of Culture. Other requests that I have put in have been dealt with quite expeditiously. As I said earlier, a lot of it depends on the nature of the story.

**Mr Henry:** If I could just add that I have done a survey on journalists and on CBC across the province, and what I found is that we do not make a lot of use of the freedom of information legislation, number one. I was surprised by that. I think some people have taken the attitude at the beginning that, well, they will just try a bunch of ministries and go on a fishing expedition and the fishing did not work. So what tends to happen now is that when we get wind of a story we then go after a document. And that is not the way it should be, I think. I think what should happen is that the barriers should not be there; people should be able to do some knowledgeable fishing. We are not going to waste our time, you know, going through months of paper. We have to be judicious in our selection of targets. But I think the act should encourage fishing, which at the moment is not taking place.

**Mr Owens:** Do you believe that the family or the victim should have the right to veto the use of his or her name? The comments about the story at High Park and the possibility that it was a case of gay-bashing—I guess my concern is, how would you forward civilization by publishing that type of information? And again, in situations like that, do you feel that the family or the individual should retain the right to veto the use of that, either the name or the selected information?

**Mr Henry:** If I could answer, I think in my experience—first of all, we are not talking about vetoing publication; we are talking about vetoing access to their names. In practice, we are very sensitive to people in those circumstances, as you have heard from my colleagues, in the decision to publish or not publish their identities. But the access to them is extremely important.

**Mr McAuliffe:** You know, there is an interesting point here too. It is that you can get somebody who makes a decision at 8 o'clock at night that they do not want their name published. Overnight their friends and family have met and everybody has become indignant about what happened. And yes, it is time to speak out. However, that message is not necessarily conveyed back to the police department because the police officer involved has gone off shift at midnight. So there you sit, unable to do anything with it. Your only hope is that the family may call out of the blue and say, "We've got something we want to talk about."

**The Chair:** Thank you, gentlemen, for coming along from the CBC this morning and presenting your brief and views. On behalf of everybody at the committee, we

appreciate one more time an opportunity to question the media. Thank you for coming along.

CHRIS ARMSTRONG

**The Chair:** Can we have the next witnesses come forward, please. Professor Armstrong and Professor Houston.

**Mr Armstrong:** Yes. She is not here. I am here alone.

**The Chair:** Order, please. Thank you, Mr Armstrong. You have about 20 minutes or so to make your presentation.

**Mr Armstrong:** My name is Chris Armstrong and this is a submission that I made with my colleague at York University, Professor Susan Houston, who is the director of the Robarts Centre for Canadian Studies. She is not here. She has to teach this morning, and we decided that our friend Dick Allen, the Minister of Colleges and Universities, might find out if she cancelled her class. So she stayed to work and sent me instead.

I have given you a document and I do not intend to read it to you, but I do think it raises some concerns that we have as academic researchers out of personal experience and out of things we have discovered institutionally. For that reason there is also a letter from the vice-president for research at York University indicating that these are concerns which extend in the research community, in academia and through the university. And I suppose that I should just explain what those concerns are and some of the impacts that this act has had on the work of historical researchers and other researchers in the social sciences.

I listened with interest to Mr McAuliffe. He got the expense accounts after five months. It was a long time. I have had a freedom of information application in dealing with 35-year-old records of the Attorney General's department at the Archives of Ontario for over two years now. I work very slowly and I can wait. My graduate students, however, cannot wait. They come to me; they have to do a degree and move on and try to get a job. And they have to change their topics. Now, this is not because of obstructionism on the part of the archives, I hasten to say.

One of the things that seems to have been done was that the act was passed out of a sense of its importance, with which we agree. But what was not done in many government institutions was to provide sufficient manpower and womanpower to administer the act. And this is in contrast with the Access to Information Act, as it is called in Ottawa, where government bureaucracies generally can respond much more quickly because they have the necessary staff to do the job. The Archives of Ontario, to give you one example, does not have enough staff to do that kind of job and so I have had to wait. And I cannot in all honesty say that in some instances I have not heard of good reasons for waiting, because some of the staff has been busy looking into records of this unhappy affair of the Christian Brothers schools at Alfred and in Uxbridge, where both the people who were in the schools and other people who may be subject to charges are asking for the archives to review records and let them see what is in them. So my attempt to snoop into the affairs of some crooked stockbrokers in the 1950s can probably wait a bit.

But the problem is that this is a real concern to researchers and especially to graduate students who cannot



wait. And so I suppose what we want to do here is to make it easier for serious researchers to get access to the records that they need while protecting the rights to privacy. Privacy is a motherhood question, I think, and we all agree. And I say in our brief that we are not intending to violate personal privacy.

But there is a provision in the act, as you probably know, for researchers to sign agreements which permit them to see records which otherwise would be denied to them under the privacy sections, including personal identifiers, if it is demonstrated that there is a good reason for that. We think that ought to continue and, indeed, it ought to be extended because one of the things that the Williams commission said when they examined this issue in Public Government for Private People, which was the basis upon which much of the act was originally drafted, was, and I quote from the brief, "It is our intention to ensure that access to archival material related to identifiable individuals for research purposes will not be hindered by our proposed privacy protection scheme."

Our point is that, unfortunately, it has hindered access. Things that were once open are now closed, and it is very difficult and time-consuming to get access to them. Just to give you one example, a very long time ago, over 20 years ago, I examined the records of the Attorney General's department. At that time all you needed was a letter from the Deputy Attorney General. Now when you go to the archives and try to look at the same documents again, you are told they are closed for 75 years from the date of their creation—that takes us back to 1915—and that you will have to wait for a review process to go on, which can take two years or more.

So that effectively discourages all interest in these questions in practical terms except for the most persistent or, in my case, slow-working researchers who can wait a bit and do other things in the meantime. Other government agencies have similar problems. I have been dealing with the Ontario Securities Commission. They had to depute one of their staff lawyers and some secretarial staff to review a whole mass of documents at an enormous cost, which I was not charged for, I am happy to say. They did not think to bill me; I do not know why. If they had, it certainly would have ended the project immediately.

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But these are problems. You cannot put an act in place and then not provide the machinery to make it work. This is only going to be made worse, I think and I fear, because of the extension of the act to cover municipalities at 1 January. It is reputed in the academic community that some municipalities have taken the following decision informally to deal with the problem: They are just going to throw all their records away. It is a big hassle to administer them and nosy people come around and want to look at them, so why not have no records? That does not seem like a good decision in terms of public policy and it runs directly contrary to the philosophical thrust of freedom of information.

So if you are going to have this act, let's make it work better. That is, I guess, what we are saying, and we have provided about half a dozen suggestions as to how that act

might be improved as a result of your review. Particularly in this case of archival material, we run into problems when we try to examine records which do contain personal information about people. It says in the act that this personal information is not to be released about living persons. The problem is to demonstrate conclusively that somebody has died.

Sometimes you actually end up in the curious situation of applying—say you want to see records of a mental institution dating from a period long ago, but it is impossible to demonstrate that an individual whose case records you may want to see has died, especially if that person's name has been crossed out. It is absolutely impossible. So sometimes you are faced with a document about a nameless person and told to demonstrate that the person is dead. This has proven to be beyond the capabilities of most researchers.

So what we are suggesting is that perhaps it makes sense to say that records containing personal information which were created more than 75 years ago about adults—that is, the records were created more than 75 years ago—ought to be releasable, with perhaps a longer period of 95 years for records dealing with those who were minors at the time the record was created. That simplifies the problem for the people dealing with access and controlling access to people. If a series of records deals only with events that occurred more than 75 years ago, then those records ought to be open.

The other thing that concerns us here is that there is a provision for research agreements, for researchers who can demonstrate a bona fide need for examination of documents. But those agreements only apply to the privacy section of the act. There are many other exemptions in the act which actually concern researchers in public policy rather more. Those include a very broad definition of documents submitted to the cabinet. There also are discretionary clauses which deal with the release of information dealing with policing, suppression of terrorism, intergovernmental relations and that sort of thing. And there appears, if I read the act correctly, to be an absolute prohibition on releasing information containing trade secrets and, as a result of a 1989 amendment, labour relations. It seems to me that those run contrary to public policy and the thrust in freedom of information.

Our suggestion is that the 20-year rule which restricts the release of cabinet documents without the consent of the executive committee concerned—which is highly unlikely to be received, I would suppose; even getting them together would be a feat, I guess—is far too long. We think 10 years is quite enough. That is the term of two legislatures at the maximum. Surely by that time things ought to be automatically available in the public domain.

In addition, we are suggesting that it would be of great assistance to researchers in public policy if research agreements covered those other exemptions too. In other words, you were permitted to look at cabinet documents if you could demonstrate a legitimate research purpose. Now, that of course requires some kind of policing, not in a formal sense, but care on the part of bureaucrats who have justifiable concerns about the release of this kind of information.



Our proposal is that it would be much better to do this policing of what is taken from records—when they might otherwise be exempt from freedom of information legislation, it would be much better to do that after the fact. Because what happens now is that when you apply to do something, it has to be reviewed. It takes a very long time. People go through boxes and boxes and boxes of stuff, taking out documents and inserting typed notices, in my case, declaring under what section of the act the document in question has been withdrawn. I can only tell you that there is one good side of working on large bureaucratic collections. That is that there are normally at least three or four copies of every document in the files and they usually miss the fourth one. So you get to see it in the end anyway. But it is not really open to you. We would like to see researchers given the opportunity to have access to documents which might otherwise be exempt if they can demonstrate a bona fide public purpose. And it seems also that it would be better to do the monitoring of the information afterwards.

The point was raised earlier by the gentleman from the CBC that there are no serious penalties for people within government who suppress information. I think the other side of the coin is that we perhaps ought to take more concern about people who release information. We have not had a problem in this province but I think, if my memory serves me right, that there is a case in progress in Nova Scotia where the Minister of Health revealed something about a senior public servant in that province, about his psychiatric problems. And I think that person—the minister—is being prosecuted. I do not know the outcome of the case. But I think people ought not to make unauthorized use of the information they obtain, and so perhaps, if we are going to ask for more rights to see things, we may have to accept more sanctions upon us if we misuse things and release them to unauthorized persons.

Those are some suggestions about a reduction in the size of the exemptions and in the length of the exemptions, and about a recognition—and this is where the letter from the vice-president of York makes this point—that the university and researchers generally are attempting to advance knowledge by taking an informed view of things. You cannot analyse and understand things in an informed way if you do not have access to certain information. And so much information is in the hands of government today that to be barred from using that information means that the quality of your research is deficient. So we would suggest to you that there is a legitimate interest here, taking account of the fact that personal privacy ought to be protected and that there are some legitimate restrictions which can be imposed on the use of documents created within government—for instance, the question of the suppression of terrorism or espionage and things like that—but that we should consider in the amending of the act, which may follow your deliberations, making a wider range of information open to researchers more quickly.

**The Chair:** Thank you, Professor Armstrong. We begin the rotation with the third party.

**Mr Villeneuve:** Professor Armstrong, you make a statement regarding the legitimacy of research and then you use the word “policing” or the supervision of what is done with the information once it is acquired. Could you expand on that a little bit? That is a fascinating area. Once someone has the information, how in the world do you control it?

**Mr Armstrong:** Well, it is a difficult problem, but what I envisaged and suggest in the brief is that if you sign a research agreement, you get the right of access to certain kinds of information. At the end of that process, when you have extracted what information is useful to you—which may be only 1% of what you have seen—you would then submit your notes to the government agency concerned to show them that you have not taken information that you were not authorized to take under the agreement. So they do not have to go through these records, which are vast in quantity often, and take things out. Secondly, it is true that truth is a powerful force, and once somebody knows something, they can phone up Gerry McAuliffe, I guess. But on the other hand, there could be penalties for conveying this information to unauthorized persons.

I do not know if that is going to solve the problem completely, but if you take the view that you cannot do anything about that, then the only thing you can do is lock up the records. We used to do that. That brings out the brown envelopes. Unfortunately, the size of the records I need—I wanted 50 shelf-feet of records from the Ontario Securities Commission. You need an awful big envelope for that.

So it is a difficult question. I only suggest that I have tried to answer your point.

**Mr Villeneuve:** Okay, and one more question. You speak of 10-year limitations on cabinet documents, etc. Now it is 20, I gather?

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**Mr Armstrong:** That is correct.

**Mr Villeneuve:** After 20 years, or even after 10 years, what would be the great hue and cry, or interest of the public? I have some difficulty with that. That becomes ancient history, really.

**Mr Armstrong:** Well, that is my view of it, and it also concerns me because the documents are very broadly defined, as I say on page 4. They include background explanations or analysis of problems prepared for submission to the cabinet. This is not even just what the cabinet decides. So I think that the definition is too broad and the times far too long. My problem is not Mr McAuliffe's; my problem is to get anybody to be interested in what I find. But I still think—my point about research is that it is important to find it out. Even if it does not galvanize the public instantly, it at least will bore my students.

**Mr Villeneuve:** That tells us where you are coming from, sir. Thank you.

**The Chair:** Any questions from the government party? Mr Frankford?

**Mr Frankford:** An area that was discussed yesterday briefly was around birth, marriage and death certificates,



and it seems that there is really considerable restriction there, although I think one could say that they should be more or less public records; the fact that somebody's birth is an obvious fact. I wondered if you have any comments on that area.

**Mr Armstrong:** Yes. I do not work in this area myself so I will not speak with as much personal experience. It seems to me that the fact of someone's birth is a point of public record, although this does bring up questions of illegitimacy and fraternity and so on which can be embarrassing. But I think the public has sufficient interest in knowing these things.

One other point that I did make in the brief that I did not speak about is that under the personal privacy restrictions now, information communicated to governments is restricted as well. Now, I can see that as far as communicating information about your own personal situation or about others writing in and saying, "My neighbour is a lunatic." But if you volunteer information to governments on a matter of public policy, it seems to me that that ought to be releasable. And I think, as you suggest, that as such we should consider carefully and perhaps put into the act a definition of the personal information which ought to be released, which ought to be freely accessible. I would think that birth, marriage and death would fall under that, but I concede that there are problems. I know that some people believe that privacy is an absolute right.

My proposition here is that I do not think that that is an assumption we make in our society. We do not want to violate people's privacy without good reason, but there is a legitimate public interest in knowing such things and being able to analyse these things. If we do not know the date of people's birth or the date of their marriage, there are serious public policy questions which cannot be analysed: medical ones, for instance, or demographic ones. So we have to decide what we are going to allow to be released, and I would in general recommend a broad release of information, although removing personal identifiers if necessary, where it seems appropriate.

**Mr Cooper:** There is one provision that I have great difficulty with, and that is the one where you ask a government agency to check the information gathered by researchers after the fact.

**Mr Armstrong:** Yes.

**Mr Cooper:** There are people that have vast capabilities of making mental notes. If they get in and they see things that are exempt, they could make mental notes and there is no way you could check on whether they have got these mental notes.

**Mr Armstrong:** I guess this is a variation on the question that your colleague raised, and I see the problem. I suppose, yes, once you know something, you can sometimes go and find it out other places. One of the more extraordinary provisions that I have been told is being attempted to be applied under the act at present is that if you find out something which you ought not to have seen because it is really exempt, even if you later discover the same information in a non-exempt place, you are not supposed to use that information. This seems to me to be

rather a curious view of the situation, a sort of Stalinist attitude that we falsify memory.

Yes, what do you do about people who see things and do not necessarily put them in their notes? I suppose my only answer, as I tried to say to Mr Villeneuve, is you make it illegal for people to communicate that information to unauthorized persons. So they can go around bubbling with this information and knowing it, but if they cannot tell anybody else without breaking the law, then they will suffer the penalties if they do so.

But I understand the problem. I suppose my answer to you is that I have suggested this mechanism because we now face the problem of people short of staff working through thousands and thousands of boxes of paper, taking out things which the researcher would not pay any attention to anyway once they got into them. So perhaps it would be in the interests of efficiency and speed to try to do a review at the end.

I can tell you that there are colleagues of mine in the academic community who have dark fears about an ex post facto review for other reasons. They do not want to show bureaucrats what they have taken out of the records because they think there may be some censorship. I worry about that too, but again, we have to balance the desirable aspects of this against the undesirable and this is my suggestion, for what it is worth.

**Mr Cooper:** This is your middle ground.

**Mr Armstrong:** Yes. It may not seem like that to some other people, but that is my proposition to you.

**Mr Cooper:** Okay. Thank you.

**Mr Huget:** In your conclusions, your number 2 says, "The protection accorded to personal information should no longer apply to the views volunteered to a government agency by an individual on a matter of public policy." If I understand that to mean what I think it means, that if I provide the government of Ontario, for example, with a view on Confederation, and someone at some point in time decides to research the discussions around Confederation, my views would then be public. Is that correct?

**Mr Armstrong:** That is right, and it could be identified with you. If you wrote to the Premier and volunteered your views as to what we should do about re-Confederation or sovereignty-association demands from Quebec, then it seems to me that political scientists and historians have a legitimate interest in your views and in identifying you with your party associations and your position. But it appears that some of these kinds of information would be restricted during your lifetime under the privacy sections. We are suggesting that volunteering your views about public policy to the government—you do not have to do it, but if you do it then people can come around and say, "Mr Huget took this view."

**Mr Huget:** And they could likely come around to the family that is left over after I am gone and say, "Why was Mr Huget such a wacko about this?" If I provide information which I think is in confidence to a government agency, and my views on any particular subject are addressed to the Premier or anyone else, I am speaking to him and I do not feel that I should be identified, that my



thoughts and words should be identified, 30 years from now or 30 minutes from now because I am responding to him. I have a hard time seeing how that would aid research. I think the views themselves, reported anonymously, would likely aid research, but you do not need to know who I am. You may need to know at the time I wrote that I was a 43-year-old white male, but that is about all you would need to know.

**Mr Armstrong:** Well, I suppose you could write "confidential" at the top or "personal and confidential," which puts the communication in a different category and then I can see there is a question there. In the case of intergovernmental documents, it is deemed to be the case usually that both parties have to agree to the release of information. If you put "personal and confidential" at the top of your letter, probably it would not be released. Would you think that it never ought to be released or would it be okay, once it is 75 years from the date of the creation of the document, to have the views of MPPs about the demise of the Meech Lake accord, with their names and party affiliations attached if those records were there? I think your role as simply a 43-year-old white male is of less importance there, perhaps, than your party affiliation to the reader and to the analyst.

**Mr Huget:** We are not saying that. We are saying, in terms of MPPs, views volunteered to a government agency by an individual, any individual, which means any member of the public. In my situation you are quite right, there likely is a difference. I do not believe it would be in anyone's best interests, when you are researching the demise of Meech Lake, for example, that if you got a thousand letters from the general public in 1991, the authors of those letters 30 years from now be identified with whatever came out of those letters. I do not see that as being essential to anything. I see the opinions as being essential to research. I do not see the identification of individuals as being pertinent to the research.

**Mr Armstrong:** As a historian, it seems to me that the views of all people are not given the same weight. If the president of the Canadian Auto Workers writes to the Premier about the question of free trade with Mexico, that is both of considerably more importance to the policy-making process and of considerably more interest to historians than if I write to him, because of the office the person who wrote the letter holds. I think it ought to be possible to identify those views if they are volunteered. I think "volunteered" is essential here. I do not want people's opinions extracted from them by requirement and then turned over to people. But I think if you volunteer your views on public policy you have entered into the public arena and therefore can find yourself identified with those views and have those views attached to your name. Perhaps I am wrong, but that is the view that I would take.

**Mr Huget:** Do you feel a situation such as that, knowing these things are going to be publicly disclosed, would somehow discourage people from providing opinions and viewpoints to governments voluntarily or otherwise? And would it temper the nature of those views?

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**Mr Armstrong:** I suppose it might do. I suppose my answer to that would be if it did so, that seems to run contrary to the philosophy of freedom of information we have adopted in this past decade, in many countries and jurisdictions, that there is free access to information in the hands of government because it has a public importance and therefore the public has a right to know what is in the hands of the government, subject to restrictions for privacy, etc.

But I cannot answer the question, I am afraid. I suppose it might impede persons from volunteering, but I rather think not. I think people who do press government agencies with views about things do so either because they feel so strongly or because they see it in their interests to do so, and they are not likely to be dissuaded from that simply by the possibility that their views might be disclosed.

**The Chair:** Any further questions? Thank you, Professor Armstrong, for coming here this morning and presenting your brief and your views.

#### ONTARIO BOARD OF EXAMINERS IN PSYCHOLOGY

If we could have the witnesses from the Ontario board of examiners come forward, please; Dr Bruce Quarrington.

Welcome. You have about 20 minutes to make your presentation this afternoon and another 25 minutes for questions. You may proceed.

**Dr Quarrington:** I think I should first offer an explanation of the documents that have been handed out to you. A submission was made to this committee some time ago, but it appears to have been lost and only recently resurrected and delivered. It has a front page identifying it as the submission from the Board of Examiners in Psychology. Then you also have a xeroxed copy of the standards of professional conduct, which is a document used by the board of examiners in the discipline of psychologists. It is given to you because reference is made to it frequently in the submission and it was felt you should know in detail what the provisions of that document are. Finally, there is a copy of the verbal presentation. I am going to feel a bit of a fool if you follow along with me. Do not follow along with me. I am going to lose track.

Something that I think should be made clear from the outset is that this brief from the board of examiners is not concerned with an amendment of the act, but is concerned with the uniform implementation of the act that is consistent with the spirit of the act and that is also consistent with the standards of professional conduct of the profession of psychology.

The Ontario board of examiners is the statutory body of some 1,800 psychologists who offer their services to the public either as private practitioners or as employees of institutions or other organizations. About 35% are employed in hospitals or treatment centres, in which the control of personal information of their patients or clients is regulated either by the Public Hospitals Act or the Mental Health Act. About 30% or about 600 practitioners are employed in institutions in which access and privacy of personal information is controlled by the Freedom of



Information and Protection of Privacy Act or by the municipal version of this act. About 17% are in private practice and a small proportion of these provide psychological services on a fee-for-service basis to institutions and agencies coming under FIPPA or the municipal version.

Broadly speaking, practising psychologists are engaged in the assessment of individuals by means of tests, observation and interview or in the therapy of individuals by means of a variety of treatment modalities or both. In their assessment and treatment functions, psychologists usually acquire a good deal of personal information about their clients. Typically, this material is kept in individual client files, usually termed professional working files, which are maintained as an independent system or personal data bank with access restricted to psychologists and non-psychologist workers they supervise.

Using the information from these working files, psychologists will produce reports either routinely or on request for workers from other professions who are working with the same clients. For example, a teacher will ask for a psychological opinion about a particular child's difficulties in learning to read, and following an investigation a psychological report will be produced in language that can be understood by the teacher and the parents. This report will end up in a general case file, which in the case of a school board is the Ontario student records. When a report is submitted to the general case file, it is written to answer rather specific questions in a comprehensible manner. It is written with the knowledge that a sometimes sizeable group of individuals will have a need to know the contents of the general case file and therefore have a legitimate access to its contents.

The professional working file, on the other hand, may contain a lot of technical test information which only psychologists need to know and may also contain other personal information that was obtained in confidence from the client or from some client-sanctioned informant and which should be released only to the client or to others with the fully informed consent of the client, or the parents or guardians of the child client.

The Ontario Board of Examiners in Psychology has long required psychologists to protect the privacy and security of working files, and the precise requirements are cited in the written report that has been offered in the appended document. The board has also presented several briefs to government inquiries with much the same points as are offered in the present submission, briefly, to the Krever commission and more recently, in response to a paper from the Ministry of Health entitled Health Care Information Access and Privacy Act.

It is known the technical test information in the hands of professionals who are not sophisticated in psychological assessment can do harm to clients. A simple example from my own experience involves a 10-year-old child who was slow in acquiring reading skills and who was referred to a psychologist for assessment. The report submitted to the teacher and to the OSR stated that the child was of average intelligence and suggested several specific ways in which individual attention would likely help this particular child in learning to read. The working files in this school board

were not secure and the teacher was able to learn that an IQ of 88 had been recorded, although the psychologist had noted particular reasons for believing this was a spuriously low value.

Despite the psychological report asserting normal intelligence, the teacher concluded the child was of below-average intelligence and decided there was little point in following the recommendations of the psychologist with respect to reading skills. In this case, a child was denied the specific help, additional help, that might have made the difference between academic success in the critical area of reading and general academic failure with all its emotional and social consequences for a child of normal intelligence.

The unauthorized acquisition of confidential information can also result in serious harm to clients. If I may be permitted another example from personal experience, I will mention a nine-year-old also failing to acquire reading skills although he was known to be an unusually intelligent boy. I was consulted about this boy because the school psychologist could not understand the nature of his difficulties. As a result of my testing, I found his difficulties were very unusual and could not make head or tail of them either.

But I did talk to the mother at some length trying to understand the puzzling behaviour this boy showed in his reading performance, and finally she broke down and told me that she in fact could not read but had been passing as a literate person and that even her husband did not know she could not read. Since the care of the child was largely in her hands and he would be reading at home, trying to read, he would from time to time ask her what this word was and she would take a guess at what it might be, often a wild guess. You can imagine this was a very serious source of confusion and this child was absolutely baffled as to how you could go about decoding or making sense out of reading with this sort of random, inaccurate input that was going on.

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I got the mother's agreement that she would not help the child any further, and I reported to the psychologist the nature of the difficulty and the conviction that one had to observe the confidentiality she asked for, but to assure the teacher if she steadfastly pursued the present course there should be rapid clearing of the child's difficulties.

In fact, the reading consultant on this board, again, where the files were not secure, got hold of the report and immediately took this information and confronted the child with the fact that his mother could not read and that he was not to pay any attention to her. So this child went home in tears and confronted his mother with this situation. You can imagine the storm and the fury that resulted and the unfortunate consequences for effectively dealing with the child from that point on.

The examples I have used have involved school boards, but the possible threat of client harm when the confidentiality of working files is breached applies to all work settings.

In institutions where psychologists are organized as a separate department, the administration has usually permitted psychologists to maintain independent and secure



working files to comply with the board's standards of practice. In some institutions, and particularly in some school boards, where psychologists are organized as part of a larger unit, such as a department of student services or special services, psychologists have been denied the right to maintain independent working files. In some instances, such varied personnel as teachers, attendance officers, social workers, speech therapists and yet others exercise this access to psychological test data, confidential case history material and treatment notes.

In a recent survey of the use and storage of psychological test data in 30 school boards, Dr Alvin Segal and his colleagues at the Middlesex County Board of Education found that in 24 boards psychologists were permitted to maintain independent working files, with external access limited to a superintendent and to individuals designated by the psychologists. In five boards, psychological test data were stored in central files with general access in four and some control in the fifth. In the remaining instance, psychological data were stored in the document section of the OSR to which there is restricted access of sorts but not of a sort acceptable to psychologists.

It is the board's conviction that the only acceptable place for these materials is in independent psychological working files. The protection of privacy provisions of FIPPA and the municipal counterpart support the board's position with respect to working files. Section 41 restricts the use of personal information to consistent purposes and involved in its lawful collection. This restriction of access to information within an institution is further characterized by section 42(d), and I believe the corresponding section of the municipal version is 32(d), which limits routine access of employees to the personal information of those served: "where disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and where disclosure is necessary and proper in the discharge of the institutions' functions."

The board argues that the Freedom of Information and Protection of Privacy Act should be implemented in a way that is consistent with the spirit of the acts and with the requirements of the statutory bodies of professionals employed in institutions affected by the act. Specifically, where psychologists are employed, independent working files should be required. These should be officially designated as personal information data banks and the description of these should be as required by the Freedom of Information and Protection of Privacy Act and should be published or made available to the public, that is, the description. Access to these files should be restricted to psychologists, those they supervise, and other institutional employees they designate.

It is the board's hope that this committee will see fit to formulate an order that will require the uniform implementation of these suggestions in all institutions which come under the control of FIPPA and its municipal counterpart.

One last matter is mentioned here, and that is the case of psychologists who are employed on a fee-for-service basis and where there may not be a psychology department and psychology files. In that case, their files are kept in the

private offices of psychologists. The point that we wish to make is: That is fine as far as security goes, but it means that the institution does not have custody of the files. So if clients are to have access to these files through the act, then the hiring agreement should contain a clause that quite clearly specifies that the institution retains control of these files even though they do not have the custody, so that there will be an access route for clients requesting access to these files.

**The Chair:** Thank you, Dr Quarrington. Rotation this time again to the government party. Mr Frankford.

**Mr Frankford:** I have been a family physician in the past, so I am quite familiar with the requirements of professions around records.

Who owns the files?

**Dr Quarrington:** Well, certainly the client has ownership rights, and we believe that psychologists have ownership rights in the sense that they are required by their statutory body to secure the files, to see that there is no accidental transmission of information and so on. And of course the institution also has ownership rights. It is a complex matter, the ownership, and one has to break down the aspects of obligation that are involved in ownership. Is that—

**Mr Frankford:** Yes, well, I know it is really quite a complex issue. In medicine I think it is bad enough, but I can see it is probably even more complex when—for one thing, the psychologist may be employed, and as you say, in the fee-for-service situation probably it is somewhat clearer.

**Dr Quarrington:** Yes.

**Mr Frankford:** I think probably the same thing applies in medicine. What are the requirements about disposal of files? How long are they kept for?

**Dr Quarrington:** The statutory body requires a six-year maintenance of files which, of course, is longer than the minimal requirements by the act. That I do not think is as serious a matter as the matter of security of files.

**Mr Frankford:** When they are in an institution, would the institution be keeping them or disposing of them after six years, or—

**Dr Quarrington:** It varies from institution to institution, of course. Generally speaking the policy of the institutions tends to be compatible with the requirements made by the board of psychologists.

If a psychologist who generates files leaves the institution, there is a requirement that he or she see that some other psychologist assumes responsibility for their protection and their transmission when that is required—by request from the act, for example.

**Mr Frankford:** Yes. These sort of things we are talking about might, in some circumstances, be copied to a family doctor?

**Dr Quarrington:** Yes.

**Mr Frankford:** But there would be no consistent pattern about that, I think, in my experience.

**Dr Quarrington:** No. There is an obligation not to transmit information that might be misleading; that is, you



have to assure yourself, even with the client's permission, that the information transmitted to a person requesting it is not likely to be misinterpreted. So there would be some technical test information, for example, that psychologists might be reluctant to send to a general practitioner but would not be reluctant to send to another psychologist where they knew that there was competence to take into account the factors necessary for interpretation of the data.

**Mr Frankford:** It seems to me that there are perhaps inconsistencies between—perhaps there should be some priority of the requirements. Would you say that the professional requirements should override the Freedom of Information and Protection of Privacy Act?

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**Dr Quarrington:** We are not suggesting that. I think psychologists are happy with the act. I do not mean to say that it means compliance with the act is an easy matter for psychologists. It is a difficult matter and there are problems ahead of us, but they are problems of compliance and how we are going to do it and not with the act itself. The act is fine as it stands. I do not know of any psychologist who, having thought about the problem, wished to see amendments, particularly in the protection of privacy aspects of the act.

**Mr Morin:** Just one question. Could you clarify for me on page 5, the recommendations made by the board, the second one mainly: "These should be officially designated as a personal information data bank and its description as required by FIPPA should be published or made available to the public."

Do I understand by that that at some date the public would have access to the document of that young child that you were referring to?

**Dr Quarrington:** No. The act requires that when a personal data bank is identified, it has to be described, and it is that description that I am talking about being made public. I may not have made that clear enough here.

For example, the requirements include such things as—well, you have to characterize what sort of information is in this personal data bank, who has access to this information. It goes on for some seven or eight requirements, and this has to be made available to the public.

In the case of a number of institutions that are coming under the control of the Freedom of Information and Protection of Privacy Act, it is published annually in a big, thick compendium of personal data banks. I gather that in respect to the municipal version, there is not the same requirement for publication, but each region will have a file that is accessible to the public that lists the personal data banks held by municipal organizations.

That is what I am referring to here, that these personal data banks, I think, should not be hidden away. They should be officially recognized as such and they should be declared publicly as existing so that clients do know they exist, know the general contents and can access them if they so wish.

**Mr Morin:** Does it apply the same way for a patient, for the doctor, for instance? Does he have access to his own document to see what the doctor has to say about him?

**Mr Frankford:** No.

**Mr Morin:** You know what I am getting at?

**Dr Quarrington:** Yes. If you are—

**Mr Morin:** What is the difference between—you have information, obviously, about an individual, which could be at some time be detrimental. You want people to have access, you want the individual to have access to that, and rightly so. You, as a psychologist, also want to have access to that. What about a doctor who makes a judgement about a patient and he is wrong? What is the difference between the two? I have access to yours, but I do not have access to his.

**Dr Quarrington:** Well, for those treatment facilities coming under the Mental Health Act, the patient, the client does have rights to examine files and so on. The Public Hospitals Act is the one where there is enormous protection on the part of the hospital, and enormous freedom too, in disseminating information. I understand that that has given rise to a great deal of concern, and the revision of the Public Hospitals Act that I understand is under way will be taking that into account. Is that your understanding, Dr Frankford?

**Mr Frankford:** I am not sure about that.

**Mr Morin:** I do not want to put you on the spot, Bob.

**Mr Frankford:** I should say that one can get legal access. Where there is a suit, I think the lawyer can get access, and I do not think it is total restriction, but there has certainly been a lot of discussion about whether there should be more access to one's own files or even patient health files. But I think there is certainly no legal provision for that at the present time.

**Mr Morin:** I am thinking of the case of the Minister of Health making a statement about the Deputy Minister of Health in Nova Scotia, and that could be very detrimental. I mean, you can destroy a whole career. And that is exactly what happened.

**Mr Villeneuve:** Thank you very much, Doctor, for a presentation that is in a different light than most, and certainly your area is more protection of privacy as opposed to many people looking for more freedom of information. Do you feel this legislation is genuinely threatening the protection of privacy of your patients?

**Dr Quarrington:** No, we think it is supportive. But we are concerned that it be implemented in a uniform way across all institutions and that the working files of psychologists be given the protection that the act affords.

For example, just a few weeks ago in one of the correctional institutions of this province, the deputy warden decided that he wanted to look at the psychological working files of his psychology department and they said, "No, you cannot." He said, "Oh yes, is that so?" and he walked in and bulldozed his way in and opened the files and gave himself access to the files to peruse for some time. Now he has no need to know that, but he was maintaining that he, as deputy warden, had the right to access anything in the whole institution. We do not believe that is so. I am sure that he did not examine the medical files in the institution. I am sure he regarded them as sacred. We are claiming that



the quality of information in psychological working files should be accorded the same sort of recognition and concern with regard to privacy as is accorded medical files.

So it is not just school boards we are concerned about, but there are examples from time to time of institutions where what we regard as the critically important privacy of files will be violated, either organizationally or by an individual who decides that, well, there is nothing that clearly accords the files this sort of privacy, and therefore he or she can do as they wish.

If there is an order by this committee to the effect that "This is the way that psychological files will be dealt with in all institutions," then I think the problem we have from time to time—generally speaking, it is not a problem, but from time to time, in one sort of an institution or another, it is a problem. I think an order from this committee would just clear it up completely, that this is the way it is going to be implemented.

**Mr Villeneuve:** I think the example you cited is an excellent one and there is a lot of discretion here as to who, maybe, should view some files. Apparently this individual made it his duty to look at everyone's file when, indeed, there may be occasion when a deputy warden could look at a file, but not blanket. You would say that a very precise requirement and explanation to whomever has access—to the commissioner in that particular case—that it be pretty in-depth reasons why the situation should be looked at.

Within this legislation, you would like to see a tightening up. You say it is complementary and compatible with what you want, yet you have made three recommendations here which are very much appreciated. But certainly the case you have just cited is an example that maybe we should be looking at in some more depth because under this freedom of information and protection of privacy, particularly in your profession, opinions are there from the professional that could be very, very detrimental to people.

**Dr Quarrington:** That is true. We have assumed, you see, that it is not a matter of elaboration of the act or an amendment, but rather just its implementation. The form of the act seems to be entirely satisfactory to us if there is uniform and compatible implementation; that is, compatible with the requirements of the professional body, medicine, psychology or what you will.

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**Mr Owens:** Just a fast question. We had a group in front of us, I guess it was last week, Parents Empowering Parents, and we heard a very tragic story about a parent who tried to gain access to her child's children's aid society files. Could you give us an opinion on how you would see that, parents accessing the files of their children for information, and what kind of recommendations you would make to the committee with respect to that?

**Dr Quarrington:** I think there are problems but I do not think they are your problems. I think they are our

problems, psychologists' problems. That is: how to produce files that you know might be accessed that are not going to mislead parents when they have access to them. Another reason we would like to have a clear, sort of uniform understanding about the independence of psychological working files is that when there is a request through the freedom of information act to access personal information, psychologists will have to be aware that there is such a request for access. For example, that might not be the case if everything was stored in a general file, when they could be bypassed. But they will know, and they will be able to examine the files to make sure that they are not going to be releasing information that might do harm to the client or a third party.

For example, a parent who gives information about themselves or their relationship to a child as part of an investigation of the child, let us say, at age eight. Now say 10 years later that record is still around and the child has an opportunity to access it. That information given by the parents was really given in confidence for the most part. They should probably have an opportunity to make sure that they want the transcript of what they said about their relationship—they should be given a chance to see what it is that is going to be released and declare that it is permissible, that it is not going to be an invasion of their privacy 10 years later, now that this child is aged 18 as opposed to age 8.

It is possible for psychologists to monitor these sorts of things and to provide that sort of protection if they have that control of their working files. I think there are other related sorts of concerns, but in general, there is no objection to parents having access to the files of their children. But in some respects psychologists are going to have to smarten up and keep better files. They are going to have to avoid using jargon, for example, and all those sort of shorthand ways that you could get away with when you were just writing for yourself or for colleagues. Now, if you are writing for your client as a co-owner, you are going to have to use more comprehensible language and avoid some other sort of sloppy things that psychologists and others can fall into when writing these working files.

**The Chair:** Any further questions? Thank you, Dr Quarrington, for coming along here this morning and making your presentation.

I will remind the members of the committee that we have one group of witnesses this afternoon from the print media, and knowing how popular it is to question the media, we can allow a little flexibility in time of questioning. However, I must remind members that their flight time is 5:05 this afternoon.

**Mr H. O'Neil:** Are you looking at me, Mr Chairman?

**The Chair:** No. You have to leave yourselves enough time to get to the airport. The meeting is adjourned until 2 pm.

The committee recessed at 1204.



## AFTERNOON SITTING

The committee resumed at 1400.

**The Chair:** I would like to call the standing committee on the Legislative Assembly to order. We have one set of witnesses this afternoon. Again, I would like to remind the members that they have got to catch a flight around 5 o'clock this afternoon, and we will allow some flexibility in question time.

CANADIAN DAILY NEWSPAPER  
PUBLISHERS ASSOCIATION

**The Chair:** I would like to welcome the members of the Canadian Daily Newspaper Publishers Association here this afternoon. You have got about 20 minutes to make your presentation, so gentlemen, the floor is yours.

**Mr Foy:** My name is John Foy and I am the president of the Canadian Daily Newspaper Publishers Association. The CDNPA is a non-profit association representing 85 daily newspapers across Canada. Together they are responsible for 87% of the total daily newspaper circulation in the country. CDNPA represents 38 of the Ontario daily newspapers.

We appreciate this moment to appear before you, to have the opportunity on behalf of the Ontario members of the association to address freedom of information legislation in this province and its municipalities.

In our brief, which we have sent you, we say that this is a wonderful and perfect opportunity to do something about the problems which have emerged, first with the provincial legislation and second with the municipal act. We would hope that there would be some consideration for immediate changes to the acts rather than have to wait until the end of the year to report to the Legislature.

I cannot remember the last time a matter having as profound an impact upon the media in this province as this sudden denial of a variety of information which historically has been made available by the police forces in Ontario. We have included in our brief a compendium of many of these policies as reported by our members. What we are seeing are extraordinary confusion and inconsistent practices towards release of personal information. This matter first surfaced as a major concern for our members when it was revealed early last spring that Metro police had received legal advice that they would not be able to reveal certain personal information because of the new act, which had received royal assent but which would not come into effect until 1 January of this year.

CDNPA reacted to this news by convening a meeting of our senior editors to look at the whole matter of media and police relations. CDNPA then met with Solicitor General Steven Offer to propose changes to the Police Services Act to require the police to release certain personal information about accused, victims and events. CDNPA then presented a brief and appeared last June at the hearings into the Police Services Act to again call for similar amendments. Unfortunately, the committee did not see our way.

We then met with Mr White of the freedom of information and protection of privacy branch in November to discuss

and make recommendations about the guidelines which Mr White's department was about to release on how police forces should interpret the new Freedom of Information and Protection of Privacy Act. We suggested that the onus should be on release of information subject to strict privacy limitations. The guidelines which were eventually released put the onus on privacy considerations first. It was clear to us and obviously clear to many police chiefs that the first obligation by anyone holding personal information was to keep matters private.

We should point out that at no time was CDNPA or any other media group consulted in the preparation of the guidelines. CDNPA has always been willing to participate in the creation of laws and discussion papers. We met with Frances Lankin, Chairman of Management Board of Cabinet, on 31 January and arranged to meet with Solicitor General Mike Farnan in late March.

Here we are before you today with an opportunity to express our concerns about freedom of information legislation in Ontario. We have made a number of recommendations in our brief. We would be pleased to address them. And I have with me today three senior newsmen who have a strong interest in freedom of information nationally and provincially. Murray Thomson is managing editor of the St Catharines Standard and chairman of the editorial division of CDNPA. Barry Ries is a senior reporter with the Kitchener-Waterloo Record and has used FOI at all levels in the course of his reporting duties. Next is Ian Urquhart, managing editor of the Toronto Star, the largest-circulation newspaper in the country and a newspaper which has reported on and used FOI extensively.

**Mr Thomson:** I would like to begin with what we refer to in our brief as "events reporting." This is not the sort of background reporting where the 30 days to get information, where the application for information, has any point at all. This is the immediate information that is letting your community know what has gone on during the 24 hours previous. It is usually a reporter arriving at a police station in the morning or evening, depending if it is a morning or afternoon paper, going to firehalls, checking on what has happened or being alerted to perhaps a fire or immediate-breaking news.

How this plays out on your community is that in most provincial newspapers, like the one to which I belong, the readership of that newspaper is roughly your constituency. It is the majority of the adult population of every city and large town in Ontario. When a reporter goes to get his information from the police, over the past 30 years we have evolved a relationship with policemen where they have come to understand the public's right to know what is going on and they have come to trust us with telling that story properly.

Now we have a situation where a reporter goes to a police desk. You are not talking about a chief; you are not talking about a senior officer in a police department; you are talking about a junior officer who has got his whole career ahead of him and he knows that if he makes a



mistake, if he errs under the FOI and privacy act, it is going to cost him. If he errs on the side of wrongfully releasing information, he may be fined, there are penalties, it may affect his career or all sorts of bad things can happen to him. On the other side, if he errs by withholding information that he is not sure of, nothing happens to him. So immediately there has been a wet blanket dropped over the release of news.

Why should that matter? Your community's major ability to deal with its own security depends on knowledge: depends on the woman knowing where the bad corners are in town, the man knowing where he can get mugged as he drops a night deposit into a bank. This is information that people rely on. They want to know. They want to know about bad accidents and where they happen.

If we remove the names of everybody from stories of accidents, crime and so on, the first thing that happens is credibility suffers. Instead of relying on me, I would like to refer you to what Mrs Carole Cameron, the president of Victims of Violence National Inc, about 600 to 700 members, the principal victims-of-violence organization in the country, told our reporter about what happens when you leave out the news. This is her quote:

"If you pick up a paper and read a story that has no one's name in it, no location, and if they can get away with it, not even mention the offender, well, what impact does that have on anyone? It's just like you're reading fiction."

This is a woman with no connection to media, but her son was murdered. She is a victim of violence, and she is appalled that the names of victims and witnesses are being removed from stories because of this act.

The same applies to the firemen. We have ridiculous rules now. If the name of a company is a person's name, the fire department cannot tell you where the fire is. If it is not, if it is the Acme Tool and Die Co, then they can, but what difference does that make on the main street of St Catharines when you have got a five-alarm fire going, half the city can see the smoke, and why on earth is it being withheld from the press? Why are names and locations being withheld?

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I go back to Mrs Cameron again on the subject of apathy. "Canadians are very apathetic. One big fight," and she is talking about the Victims of Violence association, "is fighting the backward step, and without names and such, people can't identify with the story. The work is tough enough as it is. Nobody wants to think about the day you might become a crime victim, but if we are innocent victims of a crime, what do we have to be ashamed of? Nothing. In fact, I do not see how the world would get any better if we hide it under a rug and pretend it did not happen."

What happens in our news media—you all know the ultimate horror story about a city like New York or Chicago is, when there are so many dreadful crimes—it would be probably front-page news in St Catharines. They have so many they cannot even find a place to publish them in the paper. If you take all the names out of stories of crime in St Catharines, eventually these stories will fade. People will be reading something else; they will not regard them

seriously. You have taken the people out of the story of your community. When that happens, they will drift to the back of the paper and perhaps drop out.

The FOI and privacy act is even a bigger knock on smaller newspapers such as our own. We are an independent newspaper; we do not belong to a chain. We are in a smaller community, and we cannot afford the heavy time and the heavy cost of making applications to get information. We will do it, but we cannot do it in an open-ended way. I would like to refer to a story that was done last summer. A reporter, using information largely from registry offices and so on, put together a story to show that wills were being used to divide land and to get around the terms and rules of the Planning Act. This had arrived at the point where there were millions of dollars' worth of land involved. But it arrived at the point where it was a serious inroad on planning on rural retention of land in the Niagara Peninsula. When our story ran there was an immediate uproar. Eventually laws were passed by Queen's Park to prevent this from happening, and we received a letter saying that the resulting rules that were made had come directly as a result of the story we had run. Now our reporter would be in no position to get that information, or if he got it, by the time he got it far greater acreage would have been divided up by will division.

Another example is, we did a story a few years ago we would not be able to get a hand on now, where we found out that 27% of the 700-odd members of the Niagara Regional Police were related to each other. This precipitated all the changes that took place from then on: the change in structure of the police department, the changes in the commission, new officers, including the chief, and eventually leading to the investigation into the NRP. But the head of the police commission told us that it was the story about so many being related to each other that started off the whole thing of the hiring practices and that began the whole upsetting of the apple cart. We would not have had that information; there is no way we could get it. They hide behind the FOI and we would not have been able to pursue that.

I will get to the end of this quickly. Mrs Cameron is the woman who has been on the front page of the Toronto Star, she has made the statement repeatedly, she has made the statement unequivocally to us that she and her organization are for printing the names of victims and witnesses, and yet she said she was unofficially consulted by a Queen's Park bureaucrat last summer, who argued with her, trying to make her say she thought it was a good idea to reverse her position, and she refused to do that.

I will pass it on.

**Mr Ries:** My name is Barry Ries and I am a city hall reporter at the Kitchener-Waterloo Record. The Record has a circulation of about 85,000. It is a major provincial paper in the province. I am not a certifiable expert on freedom of information by any stretch of the imagination; I am just a reporter who has covered a variety of stories in the 11, 12 years I have been there and I have had occasion to use freedom of information at the federal, provincial and now the municipal level over the course of those few years.

My experience with FOI at those levels of government has variously been lousy, so-so and here we go again,



respectively. At the federal level, maybe I just was not asking the right questions at the time. I once had the Department of National Defence quote me a price of about \$6,000 for some information based on a ludicrous price for computer time they were quoting. I talked them down to about \$1,400 at the time, but that was still a little steep for what was in essence a fishing trip, so we decided not to go with it. That is one case where price can dictate what information you are going to get.

Provincially I have had better luck, although it has sometimes taken a long, long time to have good luck. Cited elsewhere in the brief that the CDNPA is presenting today is my experience in trying to obtain a copy of the contract between the Ministry of Industry, Trade and Technology and the Toyota Motor Corp, which was eager to build a \$400-million plant in Cambridge with some assistance from the taxpayers. It might be argued by some, I guess, that the contract between Toyota and the province was nobody else's business, but I of course would argue otherwise, or I would not be here.

The real reason I asked to see a copy of that agreement between Toyota and the province was because of the horror stories that were coming out of places in the States—Kentucky, Tennessee and Michigan—regarding their frenzied purchasing of Japanese and some American auto plants. Kentucky and Tennessee spent millions of dollars to get plants—Toyota, the GM Saturn plant respectively—basically bidding against each other, and the city of Flat Rock, Michigan actually bankrupted itself in its zeal to get the Mazda plant.

So from my perspective it was certainly in the public interest to find out what the deal was between the province of Ontario and Toyota. Some information had been made public in dribs and drabs. I just really wanted to find out all the information. So I filed an access to information request with the ministry at that time, and Toyota did not want to release the information. Toyota was the third party involved. The ministry, of course, went to Toyota, asked it its opinion and basically did exactly what Toyota said, which was to release not very much at all. For any of you who have never seen what can happen in that regard, this is a copy of the agreement between Toyota and the province. This is what it looks like when it is severed. There is page after page of nothing. This is blank, and that kind of gets your curiosity going.

Anyway, so Toyota disagreed with releasing the information, and from the ministry's perspective, that was that. Whatever Toyota did not want made public was axed. What was particularly bizarre about that was that so much of the information severed was already public knowledge: the size of the plant; where it was, which of course you could see from Highway 401, but for some reason it was a secret; details of the loan, the interest payments, repayment schedules; oodles of stuff that had already been reported and printed either in my paper or in other papers around the area. So of course I appealed the hatchet job that had been done by the ministry, and the commissioner at the time, Sid Linden, did what I consider to be an outstanding job of making the ministry toe the line and release the information. He pointed out very correctly that the ministry

did exactly what Toyota wanted in this case, and I do not think anybody at the ministry even tried to mellow Toyota's position.

I eventually received everything I asked for. It took 17 months to get it and it ended up that the province did not make any sweetheart deals with Toyota, really. When I actually did receive the complete version of the agreement, I did not even find anything interesting enough in it to write a story about it. It was dull.

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The second incident I would just like to relate that I have run across recently is also mentioned in the brief from the CDNPA. I will make it short. It is something that is still ongoing. In November, the Residential Rental Standards Board, which is an agency of the Ministry of Housing, sent a nice letter to the city of Waterloo basically saying, "We exist and we are doing a wonderful job," and the Residential Rental Standards Board mentioned dealing with two work orders which had been issued by the city of Waterloo on a couple of rental properties. The board included a couple of phone numbers for more information, so I called those phone numbers and, wanting to find out more about the two work orders, I was told I would have to file an access-to-information request to obtain details. So I did. At the same time, since we serve a couple of cities from Kitchener, I also asked for copies of work orders issued by the cities of Kitchener, Cambridge and Guelph.

That was in December, before municipal freedom-of-information or access-to-information legislation took effect. It was in December that I filed this request, yet in January the Ministry of Housing turned me down saying I would have to approach the municipalities instead. So I filed four identical access-to-information requests with the four municipalities, Kitchener, Waterloo, Cambridge and Guelph. Interestingly enough, Guelph complied with my request and the city clerk actually wondered why I bothered using freedom of information; Cambridge sort of half complied, it left out addresses; Kitchener and Waterloo turned me down cold—identical legislation, identical access requests, basically three different answers from four respondents.

So where does it all go from there? I do not know. I get the feeling the provincial agencies will basically do anything they possibly can to avoid having to provide information. If they can hide behind a third party, such as behind Toyota, that is fine with the Ministry of Industry, Trade and Technology. If they can pass the buck on to the municipalities, that is fine with the Ministry of Housing.

In short, I like the idea being put forward here by the CDNPA: some kind of method whereby compliance could be enforced. If freedom of information really is a policy of the provincial government, then there should be some method of ensuring those charged with implementing the policy can take some ownership for it, should be responsible for it. I like the idea, here in the CDNPA brief, of judicial review. If access has been denied after the commissioner rules that access should be allowed, then certainly the onus should be on the head of the government institution involved to comply with that or appeal it himself. The way it stands now, the public service sees the danger in compliance, and safety in buck-passing. I will leave it there.



**The Chair:** About 15 minutes, each party, for questions.

**Mr Urquhart:** Mr Chairman, can I say a few words?

**The Chair:** Oh, I am sorry. Can you wrap it up in couple of minutes, please?

**Mr Urquhart:** Yes. I am Ian Urquhart, managing editor of the Toronto Star. I just wanted to bring this discussion back full circle to the Municipal Freedom of Information and Protection of Privacy Act. Strictly speaking, I know you have the provincial act in front of you, but I think it is a good opportunity to review the municipal act.

I think there are two key points you ought to consider. One is that it is being applied most unevenly across the province. As you can see in appendix C of what we have given you, from police force to police force there is no consistency in what is being released. And even within any given force there is inconsistency. On the Metro Toronto force, for example, the homicide and sexual assault units have taken a much tougher line in interpreting the law than their colleagues in other units. The sexual assault unit, for example, will not even say where a rape took place. So the media are unable to warn women in a particular neighbourhood that a rapist is in the vicinity. I do not think such uneven application of the law is healthy in a democratic society.

The second key point is that we are seeing here an unintended effect of the law. We have talked to the original drafters and they told us it was never their intent to shut the door on information the police had been freely giving to the media. If you check out the debates on the bill as it was going through the Legislature, this aspect was never mentioned by any of the MPPs who spoke. If I am right and this effect is unintended, there ought to be no problem correcting the law to remove it. In our brief, on pages 12 to 13 we make some recommendations on how to correct the law.

Thank you very much for indulging me. I would be glad to answer your questions.

**Mr H. O'Neil:** Just on your last comment there, the Solicitor General came before the committee in the first week of February, I believe it was, and it put out some new guidelines that were supposed to clarify what police forces could disclose. It was my understanding that went quite a way towards clearing up some of the misconceptions, but you are saying even with those changes those concerns are still there.

**Mr Urquhart:** Yes. All the new guidelines did was put in plain English what had been in bureaucratese. The effect was the same and if anything, the police forces have been more stringent since the new guidelines were released. It certainly has not improved the situation one iota.

**Mr Morin:** Have you voiced that opinion to the Solicitor General?

**Mr Urquhart:** No, we are voicing that opinion to this committee right now.

**Mr Morin:** But you did not write to him officially.

**Mr Urquhart:** We had a meeting scheduled with him this morning but it was cancelled.

**Mr Foy:** It was cancelled until later in March.

**Mr Morin:** There have been a lot of improvements since 1986 to now. How did you obtain your information prior to the implementation of the act?

**Mr Urquhart:** Prior to the municipal freedom of information act coming into effect, there were informal relationships between police forces and the media, between fire departments and the media and between city hall and the media. Most of those relationships worked; not all of them, but most of them worked. We got most of the information we were seeking and felt was in the public interest. Since the act came into effect, all those relationships have been breaking down and we are getting far less than we used to get. So the act, which was given the Orwellian name, Freedom of Information and Protection of Privacy Act, has had a counterproductive effect.

**Mr H. O'Neil:** We have had previous discussions here and the first week of February, as was mentioned, on how you police your own organization as to what does appear and what does not appear in some of these articles, and how you determine whether some of the information the police may have given you or might still give should be used. I wonder if you could touch on that just for a minute, you know, within your own organization.

**Mr Thomson:** This is done not on an organizational basis but by individual newspapers. If you think about the communities of Ontario, I think you will see the wisdom of that. Communities are different, and that ethical relationship between the newspaper and its community we feel is best addressed by the individual paper, so we have guidelines covering style, ethics and performance.

**Mr H. O'Neil:** Either this morning or yesterday we had I think it was radio, TV, where there was a set of guidelines that was followed. So you are telling me within the newspaper system you have a set of guidelines also which all these papers follow or should be following.

**Mr Urquhart:** No, we each have our own.

**Mr H. O'Neil:** Within each paper itself?

**Mr Urquhart:** Yes.

**Mr Thomson:** Yes.

**Mr H. O'Neil:** But is there a uniform—like a code of ethics?

**Mr Foy:** There is a national code of ethics, but it is up to the individual publisher if he desires to follow the national code of ethics.

**Mr H. O'Neil:** So as I say, some of these other media, whether it be radio, TV, have adopted some of these rules or regulations their members should follow, not only for the protection of themselves but the protection of the public. Have you ever considered establishing something like this, guidelines for your own people?

**Mr Urquhart:** I point out that the broadcast industry is quite different in nature from the newspaper business. Broadcasting is a regulated industry, renting public airwaves, regulated by the CRTC. If they did not come up with their own national code of ethics, it would have been forced on them by the CRTC. We are not a regulated industry. There is no equivalent of the CRTC vis-à-vis newspapers, and community standards vary so radically



between a small town, a medium-sized city like St Catharines and a metropolitan area like Toronto. To have one set of ethics applying to all three papers, different papers in different communities, would be very difficult. What goes in Toronto may not go at all in St Catharines.

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**Mr H. O'Neil:** I guess I would have to ask you why there would be a different code of ethics. Could you give me an example of why there should be a code of ethics in the city of Toronto different from a code of ethics in, say, a smaller town in Ontario? Ethics are ethics.

**Mr Thomson:** Well, some things are problems in one city that are not problems in another.

**Mr H. O'Neil:** Like what?

**Mr Thomson:** Let's say visible minorities. In one city there could be a high degree of visible minority, in another city none to speak of. It is not that we would do anything differently, it is just that we do not face the same problems as Metro Toronto, nor do we face the same problems as Brockville, perhaps, but we have our own.

**Mr H. O'Neil:** If you are talking about nationalities, why should ethics be treated differently in Toronto than in smaller—

**Mr Thomson:** But it would not be treated differently. It is just that it is not codified.

**Mr Urquhart:** That test is not unusual. It is used in obscenity trials, for instance—community standards test. Standards vary quite radically from community to community. If I may suggest, I do not think these questions are particularly relevant to the legislation before you. This is not legislation governing the media, it is legislation governing what police forces, city halls and so on or, in the case of provincial legislation, provincial government and agencies may release, not what we are allowed to report.

**Mr H. O'Neil:** But again, you were saying, when you talked to different people, whether they be the police or the fire department, that you follow certain ethics in dealing with that.

**Mr Urquhart:** Yes, we do.

**Mr H. O'Neil:** So, to me, it does pertain to it. It is part of this whole discussion. You may not agree, but I often wonder whether the newspapers—this would assist your members on freedom of information and support some of your requests.

**Mr Thomson:** Well, let me give you an example. When CDNPA surveyed all the dailies in Canada to find out what their ethical position was on the reporting of names of victims of rape or sexual assault, it discovered there was no single daily newspaper in Canada that would publish the name of a victim that was—

**Mr H. O'Neil:** Right.

**Mr Thomson:** So, I mean it is there—

**Mr H. O'Neil:** There, but it is not—

**Mr Thomson:** Yes, but it does not codify.

**Mr Morin:** This morning it was reported to us by the group that represented CBC that their reporting should be left to the discretion of the media. If I understand what you

just said, ethics is different, let's say, in Fort Erie than it would be in another small town. What about discretion? Is discretion different in Toronto than it is in Port Severn?

**Mr Thomson:** It may or may not be different, it is just that we do not think of it as something that has to be laid on for both Toronto and Fort Erie. But I think you would probably find the ethics followed by the newspapers are largely the same as every other newspaper's. Whether it likes it or not, the public would demand it in its own community. We have a tremendous feedback by phone, visits to the editor's office and letters to the editor. We have an enormous feedback from our own immediate public.

**Mr Foy:** And if they do not like what you print, they will not buy the paper.

**Mr Morin:** It depends where you live. We have one mistake; there is no competition.

**Mr Huget:** I would like to look at one of your recommendations in terms of number 4 in "Procedure." You say you have quite a problem with the fees being charged by government agencies to provide research and research time to prepare information for you. The newspapers and print media, as I understand it sell that information, do they not? I mean, in selling a newspaper. If they acquire information through research that they think is necessary to do a story on, they then sell that information to the general public through a newspaper. I wonder why you would feel it would be sort of improper for newspapers to have to pay a fee for government research time to provide that information, whether it is two hours, 20 hours, or 24 hours. I would like your views on that.

**Mr Thomson:** There are two aspects I can talk about. One is whether or not the fee is reasonable and how open-ended the time is, and does somebody want to put a clerk working in background and call it five months' work when it is three days' work. Reasonableness is the one thing that we are asking for. The other thing is the thing that I mentioned before, that you are going to make it impossible for the newspapers and media in smaller communities to even do the kind of work that we have been doing up until now and this, as I pointed out, is a valuable contribution to the community.

**Mr Huget:** But if in order for you to get the information that you require, or any other newspaper for that matter, there is an element of research that is required by government staff, who should pay for that? I think one of your recommendations is that there be a certain amount of free time in a term of 20 hours. I guess what I am saying is, that information that is then sold to the public for profit, why should the taxpayers of Ontario pay for that 20 hours of research time?

**Mr Ries:** From my perspective, I think it should be the government that pays for a certain amount of that. It is the government, after all, that is for the people, and it is the government that has the information there. And if it is accountable to the people, it should be providing that information wherever possible. I have to deal with editors too and if I say: "Hey, I can get some information. I am not quite sure what is in it, because I cannot see it unless I pay



the bill first," and you want us to give you \$1,200 just on a fishing trip, the answer is going to be no.

You can see that especially in smaller media outlets where \$1,200 is a big piece of change, and it is not something that you can pass on to the end consumer. It is not like the GST where you can just keep passing it on until somebody finally pays. Sure, you can say: "You are selling your product too. You pay us for the information, but then you sell the information to the public." But you are not increasing the price of your daily newspaper because you have that one particular story in it. Somehow or another, it has got to be absorbed.

**Mr Huget:** You would likely increase your circulation if you got a lot of those good stories, not the individual price of the newspaper.

**Mr Ries:** Idealistically, yes.

**Mr Huget:** If you were fortunate.

**Mr Thomson:** May I point out that the government is very quick to spend large sums of money getting information out to the press that is perhaps friendly to the government. The federal government has just been—I received a cassette. I do not know how much it cost to put it out, something to do with mines and resources and the Gulf war. I do not know if every editor in Canada got one of those. It is a ridiculous expense, and we get tons of paper from all sorts of government. So we are asking for a fraction of that.

**Mr Huget:** I have to note that you do say you are in favour of a user-pay philosophy for this research time, and I can appreciate that. But where there are costs incurred for people to do this research to provide you with the information, then I think it is realistic that you should pay for that information or that time.

**Mr Urquhart:** I think you are raising a good point. You as a Legislature have to decide where to strike the balance between getting information out, which I thought was the point of this whole act, and what is reasonable to the taxpayer in terms of expense. You are going to have to make that decision. What we are saying is that two hours is not reasonable from the point of view of getting the information out. The 20 hours would be more reasonable from that point of view. It is a judgement call you are going to have to make. A two-hour maximum acts as a deterrent to getting more information out.

**Mr Frankford:** Mr Ries, I am glad you talked about Toyota. We had a presentation yesterday by a business group which I think actually referred to that case and they were sort of concerned about business losses in a competitive environment because of business information. They went as far as saying that they felt the Ontario environment was too free and that it could even discourage foreign investment. Would you like to make any comment on perhaps the whole principle of freedom of business information and whether it serves an overall public good or if there is a case to be made that it discourages business?

1440

**Mr Ries:** There are certainly sections in the act right now which provide that information can be exempted and severed if it would seriously jeopardize the business of a

company, if it is confidential information. For example, when I did this access request at Toyota, I did not expect to get anticipated production levels and I did not get anticipated production levels. There are some things that, obviously, they are not going to divulge. I do not think there is a problem with genuine information that would affect the competitiveness of a company, but the wholesale axing of all kinds of information is what we are getting at here. In that example, to the extent where they would say that they will not tell you how the training of workers was supposed to be funded or even the location of the plant itself on what piece of land, that is just wholesale nonsense and that does not really have anything to do with the competitive position of Toyota. That is the only one I can really speak to, because I have not dealt that much with the business aspect.

**Mr Frankford:** I wonder whether one might not say that the business pages of papers really do not investigate enough. I think perhaps a lot of it really is very mainstream sort of stuff and there is not enough digging. Any comment?

**Mr Ries:** You will not get an argument from me.

**Mr Urquhart:** I would not single out business pages. I think there is some excellent business reporting done in this province. Just on the point on Toyota, bear in mind they made a deal with the provincial government. It is not private enterprise acting privately in that case. We have been trying for over a year to get information on the Dome deal, which is another case of the private sector making a deal with the provincial government, and we have been unable so far to get any of the documents.

**Mr Owens:** It is funny that you should bring up the Dome deal. I requested yesterday that we have the folks from the Dome come in and talk to us about their relationship with the freedom of information act and privacy. I am still waiting for a response, Mr Chairman, on that request.

**The Chair:** Mr Owens, I believe the clerk has addressed that point.

**Mr Owens:** Thank you, Mr Chairman. Sorry, I have a fairly bad cold today. The comments from Carole Cameron I have used throughout these hearings and I would tend to agree with him that in order for myself as a human being to identify and empathize with the victim of a crime, the name does help. I guess, though, that I am still struggling with that concept of being able to identify and empathize, and your role as advocates to warn neighbourhoods if there is a rapist or whatever the problem is in the area versus the victim's right to privacy. When my home was broken into, I was not really sure that I wanted to have that kind of information in the newspaper and I guess this is the concept that I am struggling with, the two ideas. I am wondering if you have any comments that could help persuade myself and maybe my committee members to go one way or the other with this.

**Mr Thomson:** Starting with the victim of the burglary, we have a policy as part of our ethics package that we do not embarrass a home owner. If something is stolen from their home that could be publicly embarrassing and that becomes the main thrust of the story, then we might not identify the home but go with what was taken as perhaps a semihumorous story. But we do not hold the owner out



to ridicule, we just would not mention his name. If we are talking about a break-in, we do it by neighbourhood, not by street address.

Now, over at the other end of the scale, I would like to quote from Sandie Bellows-De Wolfe, who was a woman that was kidnapped, repeatedly raped and almost beaten to death by Peter John Peters in that spree across southern Ontario. When it came to trial—now, of course she was not identified because we do not identify rape and sexual assault victims, none of us do, and then the court normally takes over the process from there and continues the ban on identification. She came to us and said: “I want to be identified. I do not want to be just another number, another emptiness there and all the personality is on the accused person”. She said, “I am a person too and I have been violated and I want to stand up and he is going to know who he did it to and I want the public to know”. It was a remarkable thing. She is a very courageous woman. She also agreed to be interviewed after the trial. We asked her if she wanted some time to collect her thoughts and she said: “No, I want to talk right now”. The result of that was she put the attacker in a position that the attacker should be in. She made him look exactly for what he was and she came across as a strong and totally victimized person. By lending her name to that, she did every woman and every victim in this province a service.

**Mr Owens:** I guess Mr Urquhart made a good point but it is not the media that is on trial or whatever way you want to put it. The concern that I would have in opening up the act is that you have a self-regulating body, the Ontario Press Council. The kinds of penalties that are imposed on member organizations are essentially meaningless. If you have a person, a victim for instance, whose photograph has appeared as they are smeared across the Don Valley Parkway and it is that victim's contention that their privacy has been abused, how would you see yourselves, if you are allowed to report that kind of information, regulating yourselves in a more meaningful way to prevent the kind of abuse that would occur from time to time?

**Mr Urquhart:** A couple of points: one, about the Ontario Press Council. I want to assure you we take it seriously and we do not like being hauled before the Ontario Press Council. We often lose and then we have to run a story in our paper on our front page saying we have lost and why.

**Mr Owens:** What does that mean?

**Mr Urquhart:** That is a very meaningful restriction on us for a newspaper, publicity is everything and it does keep us in check.

On the question of an accident victim on the Don Valley Parkway, first of all, there is nothing in the Municipal Freedom of Information and Protection of Privacy Act preventing us from taking a picture of an accident on the Don Valley Parkway. We are going way beyond what the act now covers. We can go and do that any day. We exercise a lot of discretion in what we publish. We do not publish the pictures of dead bodies on the Don Valley Parkway on our front page or anywhere else in our paper. We think that is

in bad taste. If there is any question about the next of kin not having been identified, we do not publish the names of the victim of accidents because we do not want them to hear from us first. Routinely, we withhold that information and before the municipal freedom of information act came into effect, the cops used to tell us: “We cannot give you the name yet because we have not notified the next of kin. When we have, we will give you the name.” It was a very comfortable relationship. We were comfortable with it, they were comfortable with it. This act destroyed all of that relationship.

I want to get back to your question of balance. To help you out in making your mind up, there are definitely some cases where the privacy of the victim ought not to be intruded upon. Our problem with the present act is that it puts the onus entirely on us to make the argument that there ought to be public information here.

If you read our recommendations, we want to reverse that onus and have the onus put on the side of publicity except in certain circumstances. If you guys want to go ahead and put in law that the name of a sexual-assault victim ought never to be identified, ought never to be named public, fine, go ahead. We have no problem with that, we do not do that anyway. If you want to put it in law, that is just fine with us. But right now, everything is being kept private by some police forces because the onus is on the privacy side; perhaps not in the act itself, because the act is ambiguous, but in the guidelines that were distributed interpreting the act, and the police are operating on those guidelines. That is where we would like to see you go, towards a reversing of the onus.

1450

**Mrs MacKinnon:** I will try to make it quick. I feel as though maybe my day of reckoning has come or whatever you wish to call it. During the course of my life I have had some very, very nasty run-ins with the press in regard to not only my own personal family but my extended family. The reporters that I ran into, or that I did not run into and wish I had—but the reporters that I had to deal with must have been long, long before your era. I do not think there was any such thing as a code of ethics or policies or guidelines or anything because, in one particular incident, a reporter—you say you do not take pictures of dead bodies—forgive me, they took a picture of the body of my mother laying on the side of the street outside of her car.

The other particular incident involved a member of my family in the hospital with a very severe coronary. The house caught fire and before I had a chance to clean up the aftermath or even get to the telephone, my God, they were broadcasting it on the radio and they had it published in the paper. The patient, needless to say, was far worse off than when he ever went into the hospital with a cardiac arrest in the first place.

So where in the world were your code of ethics all these years? Where did they all of a sudden come from? If I am going to be tough, this is one committee and one area of this committee that I am going to be desperately tough on because, let me tell you, it is devastating. It really is. I know I could go on with a whole bunch more but that is



the critical one. Where have your code of ethics and your policies been all these years, I ask you?

Maybe I am sounding pretty vile and ugly. Well, I am vile and ugly because I have listened to three or four, I forget which it is, in the past two days and I have wondered, "Where were you when I needed you?" And not only me but the other members of the family involved and the extended family. I maybe sound cruel and I make no apology for it but I want to know when it comes time to write these things down on paper, what do you expect me to do?

**Mr Urquhart:** I am not sure when—

**Mrs MacKinnon:** Let me tell you, none of the reporters were any smart brats off the Star, they were just basic papers.

**The Chair:** Order, please.

**Mr Urquhart:** I am not sure when these incidents are that you refer to. Certainly over the years newspapers have evolved to a point where they are far different from what they were in the 1920s, 1930s, 1940s, 1950s.

**Mrs MacKinnon:** Watch it.

**Mr H. O'Neil:** Late 1980s—mid 1980s.

**Mr Huget:** Evolution is a long, slow process.

**Mr Urquhart:** I am sorry, I did not mean that personally. There are things my predecessors, several times removed, did that I would not do. But I cannot say that everything we do would be something that would meet your approval. There are times daily, when a newspaper's desire to get information runs headlong into somebody else's desire to keep that information private.

**Mrs MacKinnon:** He was not even asked.

**Mr Urquhart:** Those sorts of conflicts are not easy to resolve. You can put them in a code of ethics but they are not going to answer every question for you. Things have been brought to my attention that I have to agonize over; do we publish this or do we not?

Sometimes it is as simple as "How much advertising are we going to lose if we publish this?" That is a sort of ethical question in reverse. Ethically, I ought to publish this but the flip side of it is, we might lose a major advertiser if we do. I do not think you would want us keeping that sort of information private. Other times, it is a question of how much am I going to intrude on this person's grief after a death in the family? And what is the public's right to know? We do not enter this issues cavalierly but I can see in the past we have made mistakes and done things we ought not to have done.

**The Chair:** Any further questions? We have a little leeway in time.

**Mr H. O'Neil:** I say in most of the cases when we are dealing with newspapers or radio or TV, and I think back in my own area, we are dealing with pretty reasonable and pretty sensitive people. But I guess there are the odd occasions where—as was mentioned here and a couple of others mentioned—that it sometimes bothers people. This is why I guess I mentioned where you have certain—and again, you know the question of whether it is freedom of information or anything else. But it is the working together of—supplying information to you, and you protecting what should not be let out. I sometimes wonder if there

should not be some type of a code of ethics that you would develop yourself and, therefore, there would be a closer working relationship and when information is released that is not used properly, knowing that you would enforce that it would be used properly or not used. But most people we deal with are pretty good.

**Mr Urquhart:** It is obviously something you feel strongly about and having heard you at this committee, I will certainly go back and talk to my colleagues at other papers about it.

**Mr H. O'Neil:** I appreciate it.

**The Chair:** Good question. Mr Huget.

**Mr Huget:** Yes, just a brief follow-up on Mrs MacKinnon's issues. In terms of allowing wider discretionary powers for the press to release information, and in the event that someone does not use their discretion, I guess following a little bit up on Mr O'Neil's as well, looking at a code of ethics standard, how would you see members being accountable to breaches of that code of ethics? We heard from the broadcasters association yesterday, I believe, that they have an 11- or 12-point code of ethics, and it was interesting to note that there had, to their knowledge, never been any reprimands or disciplines or revoking of licences for breaches of those codes of ethics. So I have got a little bit of a question in terms of whether they are effective or not. Are there any things that you can see, that you could do in terms of accountability over breaches of codes of ethics and a lack of discretion in using information?

**Mr Foy:** As a newspaper publishing in this country or in this province you do not have to belong to the association. That is entirely up to you and consequently, if there was a national code of ethics, which there is a code of ethics which CDNPA has, we would not discipline a member. We do not discipline members. If we were to discipline members and a member did not like that, that particular member could simply resign.

**Mr Huget:** You see—

**Mr Foy:** To answer your question, I do not know how strict that code of ethics would be to say, "All right, you violated a certain code of ethics that we put down. We are throwing you out of the association."

**Mr Huget:** I think though, the issue—certainly by Mrs MacKinnon's issues—by and large, most of our experiences is people using their discretion properly.

**Interjection:** That is good.

**Mr Huget:** But there are those situations where discretion is not used properly, and in those situations serious damage sometimes takes place. I guess I am saying, is there any way that you can see of improving that accountability when people cross that line and perhaps violate your own newspapers or your own standards of codes of ethics, and how can we create a relationship of accountability when that happens, or is there a way to do that?

**Mr Thomson:** I would say that, looking back over 30 years, there has been a great improvement. I know, for instance, that our newspaper for a fact has not run a picture of a dead person in 10 years. I know also that it has not



before that, too, but I know specifically in the last 10 years. I might add that the police in Niagara pressed on us a PR release including the names and addresses of 32 men who were found in a washroom in the Fairview Mall over a period of two weeks, a sort of a sexual hang-out. We would not publish the names, and the police were annoyed with us that we would not publish the names. I do not see how you can do better than the relationship between the community and the newspaper. That is where this has to be established, perhaps guidelines, as Ian has suggested, that we get together on this and come up with guidelines that are broader than the ethics code that exists now in CDNPA, perhaps to discuss this between ourselves and even in a sense promote them. But I do not know how to answer. I think John has pointed out the problem of making it a thing of penalty in particular. I am not trying to avoid that, it is just that I do not see how it fits.

1500

**Mr Huget:** I just think there is probably room for intelligent discussion on that issue. Thank you very much.

**The Chair:** Thank you, gentlemen. We are kind of pressed for time. Mr Owens, in response to your inquiry of yesterday in relation to the SkyDome, I believe the clerk can give you some sort of a brief answer on that at this time.

**Clerk of the Committee:** There is no procedural restriction on the committee calling in whatever witnesses it chooses under its terms of reference, under its comprehensive review of FOI. If the committee wishes, I would be happy to schedule witnesses from such a government agency as the Stadium Corp of Ontario Ltd. I would think

that the committee would want to focus its attention on how it is calling them in so as not to be seen to be another level of adjudication or a participant in an appeal process, judging the merits of the seeker of information and those who may be withholding it. You are here to do a comprehensive review of the FOI act and, I understand, looking at how the act can be improved and administrative procedures under that act. So given that caveat, I will do whatever the committee requests.

**Mr Owens:** My intent in wanting the SkyDome folks to appear was, clearly, we had a question about process made by one of the presenters, Mr Ken Rubin. I think that if we are looking at how this government would like to reform the freedom of information act, we clearly need to bring in agencies like the SkyDome to see how they operate within the framework and see why it is that they seem to have some difficulty in the release of information around affairs that are clearly public.

**The Chair:** Is it the wish of the committee to schedule witnesses from the SkyDome Corp to appear?

**Mrs MacKinnon:** Do we have a motion?

**The Chair:** Okay, we will schedule as soon as possible the SkyDome witnesses to appear in front of this committee. Thank you, Mr Owens.

I wish to thank the members of the Canadian Daily Newspaper Publishers Association for appearing here this afternoon and giving us one final chance to question the media. Thank you. We are adjourned until 1030 tomorrow in Ottawa.

The committee adjourned at 1503.



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M-7 1991

M-7 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 20 March 1991

### Standing committee on the Legislative Assembly

Application for private legislation

Delegation to Cuba

Members' mailings

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mercredi 20 mars 1991

### Comité permanent de l'Assemblée législative

Demande concernant la proposition  
d'un projet de loi de député

Délégation destinée à Cuba

Mailings des députés

Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
Greffier : Douglas Arnott

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 20 March 1991

The committee met at 1544 in room 151.

### APPLICATION FOR PRIVATE LEGISLATION

**The Chair:** We have a short agenda in front of us this afternoon. The first item on that agenda is the referral by the Clerk of the House of the application for private legislation of our friend Mr Levesque. That has come back from the Clerk of the House because we obviously have not referred it properly. It should have been referred under standing order 54, and it requires a motion to do that.

**Mr Owens:** Mr Chairman, I am prepared at this time to move such a motion.

**The Chair:** Mr Owens moves that the standing committee on the Legislative Assembly advise the Clerk of the House that, in the opinion of the committee, the application for private legislation of Pierre R. Levesque is contrary to standing order 54 and is therefore not the proper subject matter of a private bill.

Okay, there is a motion before the committee. Any debate? Questions?

**Mrs Marland:** We have certainly improved from where we started with this. We have now got the right phraseology and terms and everything.

**The Chair:** Hopefully, this will settle the matter.

**Mrs Marland:** I certainly agree.

**Mr Owens:** I think so. I really do not think that there is any need to go around the rose bush, or whatever, it is one more time unless—I think it is fairly clear.

**The Chair:** Is there unanimous consent on the motion? Motion agreed to.

**Mr Owens:** I hope we will have legislative counsel to provide for my defence when my name appears next to it.

**Mr Villeneuve:** Steve, that may get you in cabinet.

**The Chair:** Mr Owens, we will certainly review that request at the time.

### DELEGATION TO CUBA

**The Chair:** We will move to item 2 of the agenda. Everybody has a copy of a proposal for a delegation to Cuba. Jim, if you want to come forward maybe you could outline the reasons for your proposal.

**Mr Henderson:** Thank you very much, Mr Chairman. I have made a number of trips to Cuba over the last two and one half years, first of all as a tourist, then more recently to do some professional development work in my medical field with Cuba.

In the course of that, I have come to know some of the folks there reasonably well and the idea arose, first of all, informally, of a delegation of legislators from Ontario coming down to see Cuba, the idea being, I think, from the Cubans' part that they are very interested. And I should say

relations between Canada and Cuba have been very good, very bullish, the ambassador said, for about two years. The Cubans have a very strong affinity for Canada. They appreciate how much we have done for them, and I did not frankly know how much we had done for them until they began telling me about it, in a number of areas that I can mention later if anybody wants me to. They see us as friendly North Americans who might be interested in working with them in developing joint ventures, in investment areas, in expanding trade, in entering into cultural and medical exchanges and sporting exchanges and of course tourism, because more Cuban tourists come from Canada than any other country.

So they are very keen to have us. And in the course of talking about it informally on a couple of occasions—both in Cuba and in Toronto, when their vice-minister of external affairs was here a few months ago, and then again in February, when I was down there doing some medical work—I suggested they give me a letter, which they did. It is not exactly a formal letter, but a letter inviting us to come. I talked to the Speaker about it. He said it would be in order to approach the Board of Internal Economy to see about obtaining some funding for a delegation. The Board of Internal Economy reviewed it and I went and talked to them about it; and they are interested and intrigued, I think it is fair to say. But they felt that it should come here first, for two things I think—and this is my thinking rather than anything they exactly said to me. They want to feel that it has been processed through the standing committee on the Legislative Assembly, so that nobody will feel that it has been handled by the board in a way that pre-empts our own democratic process. Secondly, I think they would like the objectives tightened up a little bit so that the trip would stand scrutiny; and I might say their thinking and mine are exactly in accord on this.

I do not want this to become just another fun trip where we would go down to Cuba and enjoy their hospitality and then say, "Thank you very much," and come back. I really would like to see something come of it in the way of setting up future exchanges and making some real progress in the areas of trade, culture, investment, sports, tourism or whatever we can do. I think it is potentially very much to Canada's advantage as well, because we can work with the Cubans, we can invest in Cuba, we can embark on trade ventures with Cuba without any sense of being in competition with the Americans. So, our major competitor or one of our major competitors has removed itself from the field, so to speak, and Canada can work, I think, very much to our advantage with Cuba.

For example, Cuba would love to have us import more of their citrus. Their citrus is much less expensive than citrus imported from California, Florida or most other countries. They would love to have us import more of the



alcoholic products, rum for example. They are the inheritors of the Bacardi rum operation that was formerly in Cuba. The rum they make is Bacardi rum, but they cannot call it that of course. It is excellent rum and we import a little bit, but not very much.

1550

There are lots of areas like that: tourism, joint ventures in the area of tourism. There are some tourist ventures in Cuba that are excellent, really state-of-the-art, that are being developed by Cuba in association with Mexico, Spain, Italy and one other country which escapes my mind at the moment. But Canadians being the largest group of tourists, Canada ought to begin, I think, on that, and we are missing opportunities, it seems to me.

That is some of the background to all this. I think what is at issue in terms of this committee, aside from whatever else you might want to bring up, is just: First of all, whether you think it is a good idea in principle, and I hope you would; and second, any thoughts you might have about tightening up the formal statement of objectives so as to make it clear that this is not just a fun trip and a free holiday, that we really are trying to achieve something that would be to the best interests of Ontario as well as Cuba.

I would be happy to answer any questions or discuss anything further that anybody wants me to.

**The Chair:** Sharon.

**Ms S. Murdock:** I just have one quick question if I may. When I was reading your report, I understood that the Board of Internal Economy said something about approving or looking favourably upon five or six, and that you had 21 who had already indicated interest.

**Mr Henderson:** Well, the group of people who have indicated—let me back up a step or two. A few months ago, I sent around a memo to all of us, inviting people who were interested in Cuba in a general way to come forward and be part of an informal committee that would take an interest in Latin America in general and Cuba in particular. That group now numbers 21.

My original thought had been that the number of people who might want to go to Cuba—because there seemed to be quite a bit of interest—the number might be 10 or 15. I envisaged also incorporating a private sector representation from, say, the board of trade, the manufacturers' association, chamber of commerce and a few other groups, to make it more of a working group.

I hoped that the Board of Internal Economy might be prepared to give us a contribution towards that and that the group would simply decide how to divvy it more or less equally among the legislative members, not the private sector people.

The Board of Internal Economy had a different view. They said they did not want private sector people involved. They wanted the number kept down to something like two per caucus, plus me, plus maybe the Speaker might wish to come. So that was how it turned from a larger proposal into a smaller proposal.

Frankly, I have a completely open mind. Whatever I can arrange, I would be happy to arrange. I was a little disappointed that the number got reduced, but if that is

how the Board of Internal Economy would like to do it, it is okay by me. I guess I am in their hands or your hands or whatever.

**Ms S. Murdock:** I guess my concern is \$600—it is working out to about \$600 from your proposal, right? Our committee cannot allocate funds, right? Am I right in that?

**The Chair:** That is right.

I understand we could make a recommendation to the board.

**Ms S. Murdock:** So we could recommend that—

**The Chair:** We can recommend to the board, yes.

**Ms S. Murdock:** I personally think that if we can expand trade in any way—but I would hate to think that anyone would even perceive this as a possible junket kind of affair.

**Mr Henderson:** As would I.

**Ms S. Murdock:** I think it would be really bad, particularly—and again, I guess I am getting a little partisan here—but I am sure Cuba's history and the present government of Ontario would withstand real scrutiny.

**The Chair:** Thank you. Noble.

**Mr Villeneuve:** Thank you, Mr Chairman. The political climate in Cuba, I gather, has changed considerably. I have spoken to a number of people who have gone to Cuba and they seemed to long for a Canadian meal type of thing. They get tired of chicken, chicken, chicken.

I would suggest that if indeed this happens, we should have agricultural representation, because we are going to be importing probably a lot of agricultural produce, ie, citrus, what have you, and I think we could have a market there for some of our red meat items that we have in surplus.

Now, from what I gather, I understand it is not a democracy. The Cuban people are kept very, very low, if you will. There are stores where North Americans or tourists can buy—I understand the Cuban residents cannot even go in that store. Those are things that I do not particularly appreciate. I do not want to encourage that. But I also want to deal with that country. It is very much a developing country and I think we have potential to not only influence their political system, but to provide them with a better life. I think that is the aim of the exercise.

I guess we do not have any jurisdiction over what happens in the political arena, other than possibly trying to set an example. Our tourists are well used. The cost is right, but they come back with that strange feeling that those people are not free. That is very true, and that concerns me.

**Mr Henderson:** I think we are coming from the same direction on this in many ways. I think you are quite right in saying that we cannot directly influence their political structure, but I think it is fair to say that the more contact, interchange and exchange there is between countries with, let's say, less democratic systems and countries with more democratic systems, the more difficult it becomes to preserve less democratic systems. In other words, to put it more baldly, I think that more contact and interaction between Cuba and Canada takes a small step towards nudging at



least the climate, if not the actual political system, towards a more democratic form.

**Mr Villeneuve:** I think we have many areas that we can trade in. I would certainly not exclude agriculture. I think that is one of the major areas and I would make a strong pitch for agricultural input if indeed this exchange or this trip to Cuba does occur. Thank you, Mr Chair.

**The Chair:** Thank you, Margaret?

**Mrs Marland:** Well, Mr Chairman, I am wondering why Cuba would not want to— It would seem to me that the balance of trade would be more in favour of Cuba than it would be of Ontario. Because we are provincial representatives we can only look at Ontario obviously. We cannot look at federal trade initiatives. So I am just wondering if it is a trade advantage, a serious trade advantage to Cuba, and it sounds as though it possibly is. If it is not a serious trade advantage, we should not be contemplating it at all. But if it is, why would Cuba not want to help towards the cost of this?

Right now one of our federal members in Mississauga is on a similar visit, with the same hopeful results, to Yugoslavia. My own federal member, the other federal member in Mississauga, was in Taipei a few weeks ago. And both times the countries hosted and made the arrangements totally for that delegation to go.

**Mr Henderson:** The answer to that I think would be that Cuba wants to do that but they are painfully short of hard currency at the moment. Notwithstanding that shortage, they are paying half or better of the cost of this. If we pay, say, between \$600 and \$700 each, the greater part of that will be eaten up by the air fare, and I can tell you from experience with the Cubans that our group will be very, very warmly and, by Cuban standards, well and even lavishly put up. The real cost of the trip—I think I have this figure in here somewhere—would be two to three times what they are asking us to pay.

So from the point of view of being well treated by a country of limited means that is doing its best to be as hospitable as it can, I think this is not a bad deal. One can always say they should be doing more, but I really think, knowing what I know of how tough their situation is for hard currency, how so much of what they have come to rely on from eastern Europe and the Soviet Union has dried up on them, and what shocks their economy is going through, that the suggestion that they would like us to help with the cost of it is reasonable. I do not think we are being taken advantage of or anything like that at all; quite the contrary.

1600

**Mrs Marland:** Well, Mr Chairman, I do not think that if such a delegation goes, they need to be lavishly accommodated, to use Dr Henderson's words. I am just thinking of the—I see here 600—

**Mr Henderson:** May I just interject? Lavish by Cuban standards does not mean what it might connote to a Canadian. I just mean that the cost of the trip will be substantially more than what we are being asked to pay.

**Mrs Marland:** Well, what I am suggesting is, I see in the report it says that to duplicate this kind of delegation by private arrangement would cost between \$1,000 and \$1,500 per person. Now, I have not visited that country for a vacation, but I am certainly aware of all the advertisements for all-inclusive air fare, hotel and meals that sometimes are as low as \$359. So, I mean, I think if that is the kind of price range that tour companies can arrange, then I would think that the Cuban government themselves would be able to arrange something in that price range rather than \$1,000 or \$1,500.

And I say very sincerely that we could make this argument for so many countries, that it works to their advantage, and we could be spending money going without being sure that there was a payback for the investment on our part. I can only compare it, Mr Chairman, to the many trade missions that the federal government have all the time, going to many, many countries, where those countries bear the cost of that trade mission. That would be the way that I think I would be interested in.

**Mr Henderson:** Third World countries?

**Mrs Marland:** No, I am not saying Third World countries, Jim.

**Mr Henderson:** Cuba is a Third World country.

**Mrs Marland:** Well, do not insult me by telling me that. I know that.

**Mr Henderson:** No, but I am just asking as a point of information, do Third World countries bring Canadian legislators over at their expense, air fare, hotel, meals and everything?

**Mrs Marland:** I can get the information for you.

**Mr Henderson:** I would be surprised.

**Mrs Marland:** What I am suggesting is, which Third World countries do we decide to spend Ontario taxpayer money on? I mean, if we are going to make an investment—and sometimes, if the payback is there, I can support it; but it is like anything else. I mean, Ontario has trade offices around the world. We spend money on advertising Ontario because there is a payback in trade and business and commerce from foreign investment in this province. And it is important that we do have exchange of trade, commerce and business with other countries, including Third World countries. But we have got to know that the investment has a payback, that it is a good investment, in other words. If it is a good investment for the Third World country to spend any money at all on inviting a trade mission from Ontario, as in this case we are talking about Cuba, I just want to say that we have got to be sure that it is the right decision.

I would suggest that perhaps it is something the committee would be happy to discuss, Mr Chairman, with some more information. Otherwise, what countries will we select and on what basis, or what will be our guidelines or our parameters in deciding that we are going to visit this country or that country with that in mind? I think it is an excellent idea if it has an advantage for both parties. That is all I am saying.



**The Chair:** Thank you, Margaret. I guess one of the questions that the committee has been asked to look at or examine is exactly what the purpose of this trip is. Is it a trade mission, is it a trip from one Parliament to another Parliament? Is it a cultural exchange? I guess the committee has to determine that and we will go from there. Mr Cooper?

**Mr Cooper:** That was one of the clarifications I was looking for. From everything I have read so far, I was wondering how much involvement the actual government of Cuba has in this, and is it true that they are not the ones that are footing the rest of the bill; it is businessmen who are paying the extra over and above the \$600?

**Mr Henderson:** This trip will be hosted by an organization called the Cuban Institute of International Friendship which is an organization somewhat at arm's length from government but working very closely with the Ministry of External Affairs of Cuba. It is funded by the government of Cuba. The cost of the trip, other than the part we pay for ourselves, is going to be funded by the institute, which means through their budget from the government of Cuba.

**Mr Cooper:** So is this basically a trade mission between businessmen, because you are talking about the manufacturers' association coming down?

**Mr Henderson:** No, I am saying, if it goes forward, subject to the views of this committee, if it goes forward through this committee and through the Board of Internal Economy, it will be a group of six or seven legislators, no private sector representatives and no business people. It will be a legislative delegation; a delegation of legislators.

**Mr Cooper:** Basically what we are saying though is this was initiated by the institute and not by the Cuban government.

**Mr Henderson:** Yes.

**Mr Cooper:** Okay, thank you.

**The Chair:** I guess, Jim, what we have to determine is, is this a trade mission or is it a combination of trade mission and cultural visit.

**Mr Henderson:** I think we can define it how we want and make it what we want. I mean, if the feeling of the committee is that it should be one or the other, then say so and it will be. I do not think it can reasonably be called a trade mission if we do not have representatives from the private sector. I think I would conceive of it as a visit of legislators from one jurisdiction to another.

**The Chair:** Could I make a suggestion to the committee at this point, that we delay this matter, say, for one more week to get some more information:

One, to see if a parliamentary delegation—maybe we can get some information from yourself on their Legislature; two, on a trade mission—information from Industry, Trade and Technology and Intergovernmental Affairs on the Canada-Ontario-Cuba trade ties—we need some more information on that; three, the federal Board of Internal Economy policies regarding funding for such visits—maybe we could get some information on that?

Any questions? Will you be able to get that and come back in a week—

**Mr Henderson:** Who specifically? Are you asking me to get that information?

**The Chair:** I will direct the clerk and the research people to get that information for us and we will review this information next week.

**Mr Henderson:** Sure.

**The Chair:** Okay, if you want to come back at that time.

**Mr Henderson:** Sure. Are you asking me to get information or are they going to—

**The Chair:** No.

**Mr Henderson:** Okay.

**Mr H. O'Neil:** Mr Chairman, I wonder if I could ask Jim—I guess I have some concerns or worries about this too—has the Cuban government asked you to try to set up something like this? In other words, are they asking that it be part of a parliamentary committee, members of the Legislature, rather than trade or cultural or something like that? What angle are they coming at it—

**Mr Henderson:** I think from the point of view of the Cubans it is a visit of legislators. I think the idea that it would be helpful and beneficial to include trade and private sector representation came from me, and I gather the feeling of the Board of Internal Economy is that that is not a good idea, so I am happy to relinquish it.

**Mr H. O'Neil:** What purpose do you see if legislators went down—say, half a dozen or seven legislative people? What are they looking for to come from it or what would you see?

1610

**Mr Henderson:** I think what we would stand to gain from it would be a broadening of perspectives and an opportunity to explore cultural, economic, trade, investment and other areas where Ontario's relationship with Cuba could be expanded. I think what the Cubans would gain from it is an opportunity to learn from us about how we operate politically, how our system of government and politics works, and to make contacts with us that could lead to an exploration on the Cuban part of, similarly, trade, investment, cultural, touristic and other opportunities with Ontario; a strengthening of relationships in any sphere where it turns out to be possible between Cuba and Ontario.

**Mr H. O'Neil:** You mention that you have been going there for a number of years now. Do you see any softening of, you know, the system itself? I mean, it is a communist system and over the years we still hear that there are lots of problems there as far as opening up the country to a lot of ideas, and things like that. Do you see that as having changed over the last number of years that you have been going there, that this would help?

**Mr Henderson:** I do not have the sense of a great deal of oppression in Cuba. I feel that, for example, as a tourist, I am able to rent a bike or a car and go anywhere I want and talk to anybody I want; go into people's homes and visit with them and be entertained by ordinary Cubans; take pictures of anything I wish. In Cuba, I can turn on a radio and listen to any radio station that can be picked up



in Cuba; at nighttime, largely American radio stations, in the daytime more than likely Cuban radio stations.

The Cubans argue that their system is democratic, and that is something the delegation could take an interest in exploring, I suppose. There are elements of it that are democratic and there are elements of it that are not at all democratic. It is not as simple as saying, "We are democratic and they aren't," but on the other hand there is some truth in such a statement, but it is complicated.

I think one of the things that I have found fascinating about visiting Cuba is an opportunity to really explore—and each time I go I explore it a little more—how the system there really works. I do that by talking to ordinary Cubans that I am free to talk to, and by talking to my legislative counterparts that they have been very helpful in putting me in touch with so that I can share ideas and discuss things with them.

To answer your question, is it becoming freer, I think it is. I think particularly in the last couple of years, Cuba has come to realize that, ideology aside, it is important to get along in the world, and they are prepared to get along with countries that have very different political systems than they do. If you talk to Cuba, for example, about a joint venture investment, they say—and I have done this a few times, I have facilitated meetings between Canadians who are interested in doing some investing in Cuba and the Cuban representatives. The Canadians always begin to express concerns about freedom and whether they can take money out of Cuba or put money into Cuba, and various aspects of our impression of Cuba, and the Cuban answer is: "Look, politics is politics and business is business. We are interested in doing business with you; so as long as it works in a way that is of some benefit to Cuba, come work with us and write your own ticket."

In a way, that is what they are saying to us about this delegation. They would like to have us. We can pretty much come on any terms we want, except that they are asking—and it is really more a request, I suppose, at the moment, but it is one I feel frankly that, in dealing with a Third World country, we should try to observe—they are asking that we try to pay some of the cost of the visit. But how we set it up, what we call it, what the objectives are in specific terms, I think we are free to define and stipulate.

**The Chair:** Any further questions?

**Mr Henderson:** Is there anything that I ought to be doing between now and next week, or just come back next week?

**The Chair:** Sorry, Margaret.

**Mrs Marland:** Mr Chairman, could I just ask that our researcher look into what stands today as the official federal government policy with Cuba?

**The Chair:** Mr Owens.

**Mr Owens:** Thank you, Mr Chairman. I guess, Jim, I feel a little bit discomfited in the sense that we do not necessarily have a stated purpose at this point, and that in terms of looking at the overall political aspects of a trip of this nature at this point in time, I think I would have some difficulty in going back to my riding—and that does not necessarily mean that I would be going—and explaining

why we were sending a group of, assuming, backbenchers who basically have no authority to negotiate any kind of trade agreements, on a trip of this nature.

So I am not saying it is not a good idea; I just do not yet have a sense of the real purpose of the trip. You have not clarified that, as per the instructions of the board, to my satisfaction. Maybe I am missing the subtext in your remarks, but you may want to think about a more defined purpose. I have a real problem saying, "Okay, let's have a trip and we will make it whatever we want." That is my problem and I think that is the problem I would have to try to explain it in my constituency. I do not think that kind of trip would fly, quite frankly.

**Mr Henderson:** Mr Chairman, what if I bring next week when I come—because a number of committee members have mentioned it, as did the board—an attempt to flesh out a little bit the stated objectives or the possible stated objectives of the trip, and you may like them or want to change them or may have some suggestions of your own?

I would be happy to try to bring something back next week that would flesh it out a little bit.

**The Chair:** I think it would be a good idea. Any further questions?

Okay, we will defer this matter for one more week.

#### MEMBERS' MAILINGS

**The Chair:** The next item of business is number 3 on the agenda; that is the review of the guidelines regarding members' householder mailings. We have a number of attachments at C, D and E. Are there any particular comments on that? I know the Speaker has referred to us a number of letters he has received from various constituents regarding householder mailings that were sent out over the Christmas period, and I think they were more or less the calendar type. He has requested the committee to review those letters and make a recommendation to the Board of Internal Economy if the committee determines that any action is warranted on those letters.

Margaret.

**Mrs Marland:** Mr Chairman, I have not read this. Could somebody tell us what the problems are or what is being said here?

**The Chair:** Okay. Mr Owens.

**Mr Owens:** I am at a loss to understand why this has been referred to our committee, especially in reading the complaints. There does not seem to be a reason of substance given other than the fact that the complainants, Mr Giorno and Mr Burnside, seem to feel that these calendars are being used for political purposes as opposed to some type of instructional purpose, which they seem to feel we should be using these calendars for.

So I am not quite sure what the basis of complaint is. I do not see the calendars that were sent out from this side of the committee to be particularly partisan, unless the environment has now become a partisan issue. So perhaps either Doug or somebody can clarify the basis for the complaint. They are clearly not stating that a particular



member or a particular party is using these calendars in an inappropriate manner.

Again, I would like to have the issue clarified.

**The Chair:** Thank you, Mr Owens. Margaret.

**Mrs Marland:** Mr Chairman, if we are dealing with this matter because of these two letters—and it is rather interesting since one of the criticisms is of a federal member's calendar and the other one is of a provincial member's calendar—if we are dealing with the matter because of these two letters from constituents, I probably could have given you a couple, because you can never please all of the people all of the time. The truth of the matter is that as provincial members—and that is the only area that we can deal with, although as I say, one of these letters deals with the federal members' calendar—we have the option to send out three communications in a financial year. And whether we choose to send out calendars or newsletters or questionnaires is our choice. We are answerable to those people who elect us on an individual riding basis. And I think that if the matter was referred to us because of a misuse of those options of communicating with our riding—you know, in my six years, quite frankly, I think I have had three complaining letters, and I remember one I had was complaining about the use of paper, which was a legitimate complaint. Everybody is concerned about using paper. And then, of course, I now use recycled paper, and as all of us know, recycled paper, in terms of raw cost—we save the trees, which is good—but in terms of raw cost of production, costs something like 10 times more than ordinary paper. I know a package of 500 sheets of copying paper can be bought for \$5, and I think if it is recycled, it is \$95. So I am sure it follows about the same percentages for paper that we use to send out calendars and newsletters.

1620

So what I feel is that, as the standing committee on the Legislative Assembly, I do not think we have the authority to make a decision about the calendars unless we are going to deal just with calendars or we are going to deal with the whole communication vehicle—we described them as householders because they go to every house—the three opportunities a year that we have.

Since it is the responsibility of every individual member to deal with that in their own ridings, unless we decide that we should not do three mailings or we want to change the policy, I do not think we can deal with these two particular calendars that are before us. It is hard to know because what we have been given here is only the cover sheet of one of the calendars. We have heard a few questions in the House before Christmas, and I think there was one raised at the beginning of this week where a member's mailing was promoting their political party and perhaps there was a suggestion that there was an ad in the paper that advertised a constituency office and it advertised their political party.

Maybe, if we want to decide that should become a policy, then I think that is something we can discuss on its own. I mean, maybe we should say that you cannot have stationery and letterhead and advertisements in the paper and these householders promoting your party and yourself,

that it has to be as a member of the Legislative Assembly, that your stationery has to be non-partisan. And would that not be funny in a way, when you think about it, because the Liberals get business cards printed in red, we get ours printed in blue and I think you get yours printed in brown or green, do you not?

**Mr Owens:** Green.

**Mr Villeneuve:** What happened to orange?

**Mrs Marland:** So the thing is that, on the face of what is before us, I do not see anything on this calendar—and I am not going to mention the name—that indicates that it is any different than anybody else's calendar that I have seen. It does not mention the political party. So I think, if the issue is of calendars being a waste of paper and what is stated in these two letters, Mr Chairman, I would just move receipt of those two letters and suggest that, if the direction from the House to this committee is that we look further into the overall subject of householders, then I would be happy for us to do that. But at this point in time I think it is as ridiculous as saying, "You know, you can't have two armchairs in your constituency office, because really you could manage with two straight chairs," or whatever. I mean, how far do we want to go to tell each of us, as individual members, how to manage our own offices and our own business? If we are not responsible to do that on our own, then we are not responsible to be elected, as far as I am concerned. And I think every member is quite responsible. And if they are not, they will certainly learn about it in the next election from the people who voted them into office.

**The Chair:** Thank you, Margaret. I was just wondering, maybe we should look at the rules governing householders and maybe the guidelines need to be clarified, bearing in mind what we found out on our trip to Ottawa as regards the Board of Internal Economy, the five principles that we heard about in Ottawa.

**Mrs Marland:** That is true.

**Mr Owens:** Nice sideswipe, Mr Chairman.

**The Chair:** Pardon?

**Mr Owens:** Nice sideswipe.

**The Chair:** For example, one of the principles is that the partisan activities are an inherent and essential part of the activities and functions of a member. So maybe it is time we had a look at those guidelines for householders and reviewed them.

**Mrs Marland:** Well, can I just respond quickly—

**The Chair:** Sure.

**Mrs Marland:** —because you do have two other speakers. I feel very strongly about the fact that when I was elected a member—certainly I ran as a Progressive Conservative—but once elected as that member, in terms of my constituency office, my communications, my work and my service to everyone in my community, it is a non-partisan responsibility. I mean, it is so funny because there are actually people out in the public who think, if they are of the other political stripe that they cannot call you. You know, there still are people who think that your office is a Progressive Conservative constituency office.



**Mr Villeneuve:** Of course yours is not.

**Mrs Mathysen:** No.

**Mrs Marland:** And of course, we do not do that. We have never, as far as I know, in our party—we do not put the party on our business cards or anything else. And I think that is the way it should be. So maybe that is something we could discuss at another time, but it is not the matter before us today.

**The Chair:** Noble, you wanted to—

**Mr Villeneuve:** Yes. As a person who represents a large rural riding, my calendar is probably the most informative of the three mailings that go out. It looks at and designates the fairs throughout the rural riding, the celebrations, and also the services available through the Legislature. Yes, my name and phone number are on there because I am the rapport to Queen's Park, and I do not see anything wrong with that. But I can also see where someone gets carried away and it becomes a blatant political piece of literature. At that stage of the game I think this committee should look at it per se as an individual mailing paid for by the Legislature of Ontario, the public of Ontario.

But I feel that calendar itself is probably, in my case, and I have tried to be as neutral as possible—there is blue on the calendar and I do not want to hide that fact. It is information that is available through my office from the Legislature. It is information on different pages. I have eliminated photographs intentionally. If I can find a photograph that is absolutely non-partisan, non-political, it may show up, but the last two years I have eliminated photographs for the simple reason I just do not want it to look like a piece of political propaganda.

**Mrs MacKinnon:** Excuse me, you eliminated what?

**Mr Villeneuve:** Photographs.

**The Chair:** Order, please.

**Mr Villeneuve:** It is basically information on the 12-months greetings and there is a photograph on the front much like the example that has been given to us. And I still maintain it is one of the pieces of literature that is most helpful, ie, birth certificates, how you obtain them, that kind of information; OSAP, seniors' month in June, information that is readily available, but it is oriented towards a specific group of people, and it is non-political. It is available to everyone. So I would certainly not like to see calendars eliminated.

If there is a breach and we feel, as a committee, that someone has gone over that line—and it is a very difficult and ill-defined line. Is it blatantly political, is it political or is it totally non-political? A piece of information with 12 months on it, I have no problems with calendars at all.

1630

**Mr Owens:** I would like to make two recommendations. I think we all reasonably feel the same way about the calendar issue and I would like to recommend that the committee send a note to the Board of Internal Economy through the Speaker that we find basically—I hate to say nothing wrong, but—no wrongdoing with respect to sending out the calendars and that no further action is required.

The second recommendation I would like to make is with respect to the recommendations that came from the federal House: that we put them on the agenda for the next meeting to discuss fully their implications to this Legislature.

**The Chair:** Any discussion on those recommendations? All agreed? Sharon.

**Ms S. Murdock:** I just have one concluding comment that I would like to say regarding Mr Giorno's letter because on page 2 of his letter, at the end of the third paragraph, he says, "What makes calendars offensive is that self-promotion is their only purpose."

I may be somewhat naïve, but this person was also a former constituency assistant and/or an executive assistant to some MPP. I do not know which one. I do not believe for a minute that is true, and I find the statement offensive. But the two questions that he asks at the end are: "Why do you feel that the cost to the taxpayers of producing and mailing your 1991 calendar was justified?" and, "As a member of the majority party"—because this letter was addressed to Mr Marchese—"in the House, will you push for a clarification of the rules...?" And I think we have covered the second one.

The first one I would like answered, but I would like it answered very specifically to this Mr Giorno.

**The Chair:** Thank you. Any further comments?

We will then forward our—

**Mr Villeneuve:** What about a copy of Hansard of this discussion? I have no problem with this committee looking at what might be infractions, but going from there to—I think it is one of the most informative pieces we send.

**Mrs Marland:** I think as I read Mr Giorno's letter, it is going to need an answer because he has some really inaccurate statements here. For example, if he had copied this letter to one of the major newspapers, people reading it would say, "Oh, MPPs and MPs are prohibited from sending partisan material at taxpayers' expense because it is agreed that members' budgets should not be used for what is, in effect, political advertising."

That is Mr Giorno's statement, and this is a letter that went to a provincial member and a federal member and now it has been referred to this committee. I do think we probably have to answer the letter and give Mr Giorno some clear information and facts about what stands today as guidelines for the use of our mailings. In fact, we do not have any.

**The Chair:** Would you wish me to draft such a reply and have you review it at the next meeting?

**Mrs Marland:** Sure, because I do not think we can let this letter just stand the way it is because it is inaccurate.

**The Chair:** Okay, thank you, Margaret. Any further comments?

**Ms S. Murdock:** This is really crude but I am going to say it anyway, because the more I think about it, I find it amazing that this person, as a former executive assistant to—

**Mrs Marland:** Do not say it, because I purposely have not mentioned any names in this.



**Ms S. Murdock:** No, and I am just wondering if the MPP to which he was an executive assistant is still around. If he is not, I am not surprised.

**Mrs Marland:** Well, he is.

**Interjection:** Very much around.

**Mrs Marland:** I will tell you afterwards who it is.

**The Chair:** Okay. This was referred to the Speaker of the House, who in turn referred it to us for review. We will draft a letter of reply for your review next week, to send it to this particular individual. We will also instruct the Speaker of the House that we believe that no further action in regard to calendars as householders should be taken at this time.

Any further business for the committee before we move on to item 4? Margaret.

**Mrs Marland:** Oh no, I just thought you said any more business for the committee, and I was looking for item 4.

**The Chair:** I guess there is still some outstanding business to be done in relation to the review of the freedom of information act. We have about another four witnesses, I think, who have to appear before the committee or want to appear. We will try to schedule those in the coming weeks. We have also got a request of Mr Owens's to deal with, that is, to have people appear from the SkyDome Corp to answer certain questions, which we will deal with in the coming weeks as well.

Is there any further business to come before the committee? Margaret.

**Mrs Marland:** Well, in that fast little summary that you just did, are matters to come before this committee at the suggestion of individual members or does the subcom-

mittee—I mean, that is the first I have heard of Mr Owens's suggestion. I think it probably would be very interesting, but I am just wondering, how do matters before this committee get before the committee. I mean, does the subcommittee not sit and decide?

**The Chair:** Just to clarify it, that was a request raised by Mr Owens at I think the last day of hearings in Queen's Park in regard to the freedom of information act. It was arising out of some comments that were—

**Mrs Marland:** Okay, the connection is with the freedom of information act.

**The Chair:** Yes. Is there any further business that members want to bring before the committee? I understand there has been quite a number of replies to our request for improvements to members' services, or suggestions, and hopefully we will be in a position very soon to circulate all those comments to each member of the committee.

**Mrs Marland:** Good. And we also have to discuss a schedule of our other meetings, other than just dealing with the freedom of information act.

**The Chair:** Would you make a recommendation that the subcommittee meet and deal with that?

**Mrs Marland:** I think that would be a very good idea.

**The Chair:** Thank you. Mr Owens.

**Mr Owens:** No, I was just going to suggest we do have to look at some budgetary considerations for this year, and I gather the subcommittee should probably meet as soon as possible.

**The Chair:** Okay. Thank you, Mr Owens. And we must include Margaret's trip to London. Thank you.

The committee adjourned at 1639.

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ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 27 March 1991

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Première session, 35<sup>e</sup> législature

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 27 March 1991

The committee met at 1541 in room 151.

### DELEGATION TO CUBA

**The Chair:** We have kind of a short agenda this afternoon. I know we all want to hear our own leaders speak on the constitutional issue, so perhaps we could get through the issues before us this afternoon and, if it is possible, the subcommittee could meet briefly after the regular meeting, just to arrange a time so we can get together and have a full discussion on some of the business that is still before the committee for the rest of the session.

The first item up is the follow-up of last week and a review of the proposal for a delegation to Cuba. Mr Henderson, come forward. Has everybody received the various reports from Jim and from the legislative research in their packages? Jim, is there anything else you want to add?

**Mr Henderson:** I do not think so, Mr Chairman. I could walk through this, but maybe it is not necessary because everybody has read it. If anybody wants me to, I will, or if you want to ask me any questions, I will be happy to respond.

**The Chair:** The floor is open to questions. Ellen, go ahead.

**Mrs MacKinnon:** I have been asking a few questions around in regard to the benefits of this and so on and I was asked to ask you if you have any knowledge of what is being done in Cuba in regard to the conservation of energy.

**Mr Henderson:** I have not put my mind to it. I can tell you there are blackouts and I suspect that is why; that is, from time to time areas will be told, usually with some kind of notification, that in order to conserve electricity, their electricity will be turned off.

**Mrs MacKinnon:** I am sorry, Mr Henderson, I have fluid in this ear today. I am not hearing very well. Excuse me.

**Mr Henderson:** I have not thought about that in a systematic way, nor have I asked them about it, so the only thing I can say anecdotally is that I know there are power blackouts from time to time. I have heard that the power blackouts are to conserve energy. Cuba is short of electricity and has no rivers, so in order to generate electricity, since they do not have much nuclear power yet, they have to burn oil or coal, and they do not like burning very much oil or coal for that purpose. That is the only comment I can make, and it is not a very full response.

**Mrs MacKinnon:** What was brought to my attention was that they have apparently shut down some car manufacturing plants and they are now building bicycles, selling them very very reasonably, and giving people that form of transportation. Is this so or do you know?

**Mr Henderson:** I have been told there are no car manufacturing or assembly plants in Cuba. There are some engine manufacturing plants and there may be some plants

that are involved in making automotive components or something, but there are a lot of bicycles around. So that is certainly compatible with what I have seen.

**Mrs MacKinnon:** Okay, thanks.

**Mr Henderson:** If I can just say a little more about that, Cuba knows it is in for a period of belt tightening. They also know that the Americans and other nations think their regime is about to topple and they feel almost amused by that because they feel very loyal to the revolutionary spirit of their government. But they know changes are needed and, within certain limits that they have defined, they are very open and very receptive to finding new ways of doing things, particularly to becoming more businesslike and entering into transaction with marketplace economies.

Cuba knows it is in for a period of belt tightening. They are very free about that and they know why, or at least they have a concept of why, and they are interested in becoming economically stronger, economically more self-sufficient and they feel that one of the ways of achieving that is going to be strengthening political trade, commercial investment and other ties with various industrialized countries in the west, specifically us.

**The Chair:** I would like to draw the committee members' attention to the Hansard from the House of Commons dated 14 March. There was a federal delegation to Cuba from 3 February to 10 February of this year. Any further questions? Is there a motion from the floor on where we should go from here?

**Mr H. O'Neil:** Doctor, you were asked to come to this committee and then we were to make suggestions. What was the process, again, that you wanted?

**Mr Henderson:** My understanding is that the issue was sent to this committee for a fleshing-out of the objectives and purposes of the trip I have proposed to you and for a kind of approval in principle. The question of whether and how much it would be funded I think will be taken up by the Board of Internal Economy if you decide that in principle this is a good idea. That is my understanding of it.

**Mr H. O'Neil:** Dr Henderson has always been a strong proponent, I would say, of the people of Cuba. He has been there several times and he knows the government people very well and I think I understand what his aims are that the closer the relationship we have with those people—I do not know whether I am correct in saying this—maybe the closer they will come to the type of system we have. Any talking back and forth between peoples of different countries always is of assistance and help in matters like this. It might also be that even if there was not financing approved for a trip such as this, there might be members of the Legislature who would even think about visiting Cuba at their own expense to try and create some goodwill and a good atmosphere between their two countries.



**The Chair:** I think you did an excellent job in outlining the objectives for a delegation to Cuba. However, what is the wish of the committee? Is it the wish of the committee to approve the delegation to Cuba in principle?

**Mrs MacKinnon:** Do you need a motion, Mr Chair?

**The Chair:** Yes, the Chair would need a motion.

**Mrs MacKinnon:** I so move.

**The Chair:** There is a motion on the floor to approve in principle the delegation to Cuba. Any discussion on the motion?

**Mr Villeneuve:** I notice from the documentation that Canada is a very large net exporter to Cuba. Ontario has basically a balance with Cuba vis-à-vis imports and exports, and as a developing country and one whose regime, that of a dictator, may be about to fall apart, I think we could have a positive influence and possibly be in there as a province to further improve our net exports to such a developing country; of course, a two-way street, as I notice that the major imports from Cuba range from cane and beet sugar to denatured ethyl alcohol by volume, spirits and liquor, etc. Pertaining to an earlier question, I do believe they do burn ethanol quite extensively in Cuba, an offshoot of the sugar cane industry, and that may well be one area we could be looking at. I realize there is a short supply of petroleum products, but I do believe the sugar cane industry is providing them with some fuel. It may be something worth looking into.

1550

**The Chair:** If it is the wish of the committee.

**Mr Owens:** What would be your plan now, upon returning from a trip? I see you have some fairly extensive goals you would like to meet while you are there, but the thing that is missing is how you plan to use the knowledge base that is gathered while you are there.

The other issue is the same issue I expressed at the last meeting about the authority of private members to meet with these folks to discuss the expansion of trade and to possibly—I am not sure what the word is, but to give the appearance to these people that this delegation actually has the authority to negotiate these kinds of agreements. I understand the principles as you have stated, but again, that concern is still in the front of my mind.

**Mr Henderson:** Clearly, as a delegation of legislators and members of an assembly, as opposed to an official government delegation, we are not going to be down there negotiating trade agreements and treaties and stuff. There is, however, a lot that, as individual members, we can do. The Cubans will receive us in that spirit and treat us as people who can make a difference.

For example, just a couple of days ago I was talking to a distiller that imports rum and puts out something they call a blended imported rum. They import mainly from Trinidad and Guyana, and they were very interested in the idea that they could import more from Cuba, Cuba putting out, first of all, a first-rate rum product. The Cuban rum industry is heir to the Bacardi rum factory that was in Cuba at the time of the revolution. And they were especially intrigued,

obviously, with the fact that Cuban rum probably could be purchased for a very favourable price.

So having talked to them about that, I will convey their interest to people in Cuba. The Cubans in turn will give me some further information about Cuban rum, which I will pass on to the distillery. Out of that can come something that is presumably beneficial both to an Ontario industry and to Cuba, in the way that most trade initiatives are.

I could go on giving you examples like that if you want, and I would be happy to. My only point would be that I think this is one area where we as backbenchers really can do a lot. Each of us has constituencies where there are industries, maybe manufacturing or what have you—agricultural areas certainly would fall into this—where as a private member you can approach an industry or some other organization in your constituency and say: “I think there is an opportunity here. Would you like me to help you look into it?” In effect, you put yourself in the position of being an honest broker, with nothing really in a sense to gain or lose one way or the other, but a contribution to make both for Ontario, which is our primary mandate, and for a Third World country where we have something to contribute without it costing us anything; in other words, in a way that benefits both. If you want, I can give you some more examples, but there are lots of opportunities to do that.

**The Chair:** I would draw the committee’s attention to the fact that the official delegation that went from the federal Parliament to Cuba presented a report to the House of Commons on its findings. It could be part of the recommendation from this committee to the Board of Internal Economy that a similar report be tabled in the House on the delegation’s trip to Cuba, with its findings or recommendations or whatever else.

**Mr Owens:** Not wanting to be provincial or parochial or all those other things we are accused of being, I am told every day by constituents and members of the opposition that we are in serious economic difficulty within our own province. While I am certainly new to this game, relative to some of the members on the other side, one learns fairly quickly that perception is everything in this game, and I am just wondering what the perception is going to be. We have constituents in every riding of members sitting in this room today who are struggling to make ends meet, while we are certainly not a Third World country.

Again, the perception people are going to have is not going to be of a trade or a cultural delegation, but yet another pork chop trip sponsored for the politicians to go to a nice sunny country and enjoy themselves. I still have some difficulty with the trip. It is certainly not a personal problem with you yourself. It is the perception that constituents in my riding would have of a trip such as this. If we were to think about including ministerial representatives, your idea of recommending that the committee report to the full Legislature certainly has merit.

I think if we are going to do something like this it still needs to be even further constrained than what we are currently looking at in this presentation. Until we get those kind of constraints in place, I do not think I can honestly



face my constituents and say I approved in principle to send this trip on to the Board of Internal Economy in good conscience. I mean, I just had a constituent come to my office who was unable to pull together another \$26 a month to get an apartment. If that constituent comes back because she has been turned down by the Minister of Community and Social Services as well as the local municipal people, how can I explain to her, "Well, yes, you couldn't get your \$26 but we paid \$600 a member" or whatever it is at this point "to send people to Cuba"? I have a little difficulty. Maybe I am being doctrinaire and dogmatic, but this is the way I feel and I know my constituents are feeling the same way.

**Mr Henderson:** If I could just respond, I have three points I want to make. The fact that we are in difficult economic times is not a reason not to be exploring expanded trade with a newish and growing trade partner. It is not a reason not to be looking for alternatives to trade with the United States, which is, as you know, overwhelmingly our largest trade partner. It seems to me that it is because, not despite, our difficult economic times that we would want to look to expanded trade opportunities with Third World countries in general, Latin America in particular and Cuba in further particular, if only from a purely selfish point of view because we can buy stuff a lot more cheaply in Cuba than we can buy at lots of other places, and that presumably would be reflected in lower consumer prices for those Cuban articles that are sold here.

The second point I want to make is that if we were to go in January or February or even December or March it looks a bit like a good-time trip. But any of you who have been in the tropics or semi-tropics in September will know that, although you can have a good trip, first of all, it is very, very hot, and second, you are not necessarily welcoming the heat, given that you are not coming from a Canadian winter. I would certainly feel able to defend this trip, mentioning among other things that September is not the time you pick to go to Cuba if you just want to have a good time. You just do not do it then.

1600

The third point I want to make, if we are looking for a way to rationalize or tighten this, in the event that this goes forward officially and the board and so on authorizes it and wants to pay a little bit, take it as one or even two—but for the moment one—of the 10 trips a year we are each entitled to within the province, one would be able to say: "Well, yes, we did, but (a) there were good economic reasons for doing it, (b) it is September, which is not a time when you go to Cuba to have fun, and in any case, I gave up one or two of the trip allotments I am entitled to as an MPP in order to make this trip." That would be one way, and I am sure there are other kinds of things that could be thought about to build in features that would make it more defensible in the event someone is anticipating difficulty in defending it.

**The Chair:** Further debate? Are we prepared to call the question? In your motion, do we want to include the fact that it is for the delegation to prepare a report for the House?

**Mrs MacKinnon:** Yes, I will do that.

**The Chair:** Included in that, I think, as a friendly amendment.

**Mr Cooper:** And the various ministries, as you have Trade in here, plus Culture and Sports and Recreation. They were each itemized, so a report to each ministry also.

**Mr Henderson:** I think we should do that. I think that is eminently reasonable.

**The Chair:** All those in favour of the motion? All those opposed?

Motion agreed to.

**The Chair:** Thank you for appearing here this afternoon.

**Mr Henderson:** Thank you for your consideration.

**The Chair:** The second item of business is a review of guidelines regarding the members' householder mailings. I am wondering, should this item actually be referred to the subcommittee to look into along with the other concerns raised by members in the review of members' services? Is that okay with the committee? Thank you.

#### REGISTRAR GENERAL'S OFFICE

**Mr Villeneuve:** Mr Chairman, there was an item brought up in the Legislature today that is of great concern I believe to every elected MPP in this Legislature.

The registrar general's office provides birth certificates to residents of Ontario. That is an area where I, as an MPP—and I think I speak for the vast majority of the 130 elected people here—have been able to provide constituents who needed a birth certificate in quick time. In other words, we have been able to, on occasion, get a birth certificate within 10 days. This, I understand as of today, is a thing of the past.

The registrar general's office is moving to Thunder Bay. I have no objection to that except that the Legislature stays here at Queen's Park. The members come here to Queen's Park on a very regular basis. I am requesting a change in what we are told will be the normal procedure, which will require every MPP, because of the so-called freedom of information legislation, to have a signed statement by the person requesting the birth certificate that indeed the government has authority to divulge the person's name and date of birth. I find that rather ludicrous, because people come to us in good faith that we can provide them with this service.

I can tell you, on a number of occasions, because of restrictions and limitations in boarding aircraft going to destinations out of this country, a birth certificate was a requirement. I have been able to accommodate just about everyone who came to me at the 11th hour looking for a birth certificate. I will not be able to do this henceforth, and I think it is a grave injustice to MPPs not to be able to go to the registrar general's office as we have in the past, at the MPP desk at the registrar general's office, leave the information there and then have a call several days later, "The birth certificate is now ready to be picked up." We as MPPs take them home on Thursday night or whenever it is we go back to our riding. In my case, I have a riding that is some 160 km from east to west, and people will drive to my office or I will drop the birth certificate off at a central



spot on my way through, and they will pick it up. It has always worked. It will not work from now on with the registrar general's office being in Thunder Bay.

I plead, on behalf of my caucus—and I have been mandated by my caucus to be the spokesperson—to ensure that MPPs do have, as in the past, an office here at Queen's Park connected with the registrar general's department to obtain birth certificates, particularly when they are needed in a hurry.

**Mr H. O'Neil:** We discussed this for a couple of minutes before the meeting started. I guess having been here almost 16 years now, it is likely one of the best services we as provincial members provide for our constituents. I know one of the arguments that has been used by the odd staff member is that they would be providing a special service to MPPs, and some of them have said they do not feel this should be given to MPPs. The argument I would use is that it is not being provided to the MPP; it is being provided to the constituents.

I see the reasoning for locating the office in Thunder Bay, but I also would like to see if we could not put a recommendation from this committee as to that. I think if we had two people working out of the Toronto office here, that would facilitate all of the service we need. Again, as has been mentioned, where some of these birth certificates are needed—they may not be only birth certificates; a death certificate or something like this—if they had an additional two staff members located here in Toronto, I think they would be able to handle the volume that we give, and we as MPPs would again be able to offer that service for our constituents.

I should also mention that I talked with the minister this afternoon, and I know some of the other party members have talked with her. I think she is very well aware of the problem and would also like to find a solution that would help us out. I know Mr Elston also raised it in the Legislature this afternoon, and hopefully we could have something go from this committee asking that we have that MPP desk here in Toronto so that we can look after the rest of the province for those who are not close to Thunder Bay.

I might also say, for some of the newer members, that over the last number of years I have found that the employees with the registrar general have been excellent people. When we needed something in a hurry, they always went out of their way to try to provide this service for us. So it is in no way knocking those people. The ministry itself and the employees have been very helpful.

**Ms S. Murdock:** Having worked as a constituency assistant, of course I know exactly what both Mr Villeneuve and Mr O'Neil are saying and concur absolutely. In fact, in my "former life," as everybody says, the representation that was made to me was that the MPPs' desk was going to remain. If that has changed, I think it should be reconsidered, and I heartily agree that we should be making some kind of representation.

My staff do not have time right now to stand in line, as Mr O'Neil said, for two hours and wait to meet with some clerk. The way it was operating before was that the MPPs had specifically designated personnel, and you called to

that person; I guess they were designated areas or something. However it was arranged, they were excellent. You got it done quickly. It is a service that MPPs provide and is much appreciated by the constituents, so I would agree and support any letter we send to the minister.

**Mr H. O'Neil:** If we do send a letter from yourself, Mr Chairman, I think it should be prepared right away and even faxed over to them or delivered to them by hand. I know we had a batch of requests for birth certificates today, and we called over and were told not to deliver them over to them, to send them up to Thunder Bay. You can imagine the delay that is going to create. A couple days, even by courier, to Thunder Bay, plus the expense of it, courier it back, and it is in the general pile there. We are talking two or three weeks.

**Ms S. Murdock:** And we cannot ask Shelley Wark-Martyn to pick them up for us.

**The Chair:** Seeing the urgency of this particular matter, we can get a letter drawn up this evening. Actually, meeting with the Speaker of the House in the morning, I can pass on our feelings here from this committee. I will also arrange a meeting with the appropriate minister in the morning to get our feelings across, if that is the wish of this committee. Did someone want to draw up appropriate wording? You leave that up to the clerk and myself.

**Mr Morin:** May I suggest that a copy of the letter be sent to the members so that they know that action was taken immediately.

**Mr Villeneuve:** And possibly if you have a copy of this Hansard that it is a unanimous request supported by everyone.

**The Chair:** Thank you. I think this is a unanimous request of this committee.

**Ms S. Murdock:** Let's put this to an actual vote.

**Mr Owens:** Absolutely, and I think we should probably also be sending a note to Frances Lankin if we have not already discussed.

**The Chair:** We will be doing that officially as a committee. If someone would move a motion so we can get in on the Hansard. It will be moved by Mr O'Neil.

**Ms S. Murdock:** May I second that?

**The Chair:** You may second that. All those in favour? Motion agreed to.

**The Chair:** It is the unanimous decision of the committee. I will do that in the morning on behalf of the committee.

#### COMMITTEE SYSTEM

**The Chair:** There is another piece of business before the committee. Everybody received a copy of the letter that the Chair has received from the Speaker of the House indicating that the standing committee on the Legislative Assembly may wish to consider the role and function of our committee system in an effort to provide an efficient and relevant response to the modern-day pressures on the Legislature of Ontario. An examination of the committee system in the House of Commons, Ottawa, and that which is used at Westminster may prove to be extremely helpful.

Is this something the committee may wish to refer to the subcommittee for further action?

**Mr Morin:** Am I on that committee?

**The Chair:** I believe so.

**Mr Morin:** I concur and agree that we should explore thoroughly.

**The Chair:** Okay, this particular item will be forwarded to the subcommittee. Is there any further business before the committee?

**Mr Villeneuve:** When will we know our request to the Minister of Consumer and Commercial Relations on the birth certificate, the registrar general with?

**The Chair:** I think there is some urgency. If we can get that letter drawn up this afternoon, I will try to deliver it this afternoon personally or first thing in the morning.

I will make sure every member of the Legislature gets a copy of that.

**Mr Villeneuve:** We may have a feeling as to what will be happening before we leave the premises tomorrow evening?

**The Chair:** I will try to get an answer from the minister.

**Mr Villeneuve:** Do you think you might want the subcommittee to get together after question period for a short period of time tomorrow?

**The Chair:** I was going to suggest that anyway, because we have some other business that we need to discuss. Any further business before the committee? The committee stands adjourned until 3:30 next Wednesday.

The committee adjourned at 1613.



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ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 3 April 1991

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Members' advertising

Schedule of meetings

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Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 3 April 1991

The committee met at 1546 in room 151.

**The Chair:** I call the standing committee on the Legislative Assembly to order. The subcommittee met this morning and had agreed to an agenda for this afternoon—the three items on the agenda—and I understand has put together a proposed schedule of meetings for the months of April and May. Has everybody got a copy of the proposed schedule?

### MEMBERS' SERVICES AND FACILITIES

**The Chair:** We would like to begin by a review of members' services and facilities, and this afternoon we have Barbara Speakman, the executive director of assembly services, here to talk to us a bit about the Styrofoam containers and overpackaging in the Legislative Building.

This is an issue that has come forward to us in response to the questionnaire we sent out last year. It came from the Minister of Education, where she brings up the whole question of the Styrofoam containers and overpackaging in the Legislative Building.

**Mrs Speakman:** I believe that some members are perhaps unaware that we have drafted a policy statement on waste management in the food services area. We have, since early 1989, been progressively improving our waste management procedures in food services. Members who have been around for a while will remember the days where all of the catering used foam cups and not china, and we have changed, as you see, to china for all the committee rooms, for the lobbies, for the dining room. We are using bulk containers for creamers, sugars and so on, to avoid the use of all those little disposable containers.

We started back in 1989 with the first commercial blue box program in the city of Toronto. Up until that point, it was only a residential program. The Legislature jumped ahead of the Ontario government and we struck a deal with the city to do a blue box program for this building alone. But later, once the government introduced it to all the government buildings, we participated in that project. So we really have been trying to improve things progressively over the last couple of years.

In terms of the food services area, the last remaining problem area is the cafeteria and takeout food. We initially changed to biodegradable paper cups. However, we still had the problem of waste and the disposal of it and its going into the general garbage collection.

More recently, we changed to the recyclable polystyrene so that at least we would get some reduction of waste. It is still not our optimum. We would much prefer to find a better solution to that particular problem. A great amount of our cafeteria business at lunchtime is takeout.

We do put stuff on china plates for people who are staying in the cafeteria, but a great deal of it is just your own staff and the assembly staff having a quick salad or

even a hot meal back at their office so that they can prepare for 1:30. We have decided to give in a little and have at least the recyclable polystyrene for the time being until we find a better solution.

Previously, the members who have been here for a while will remember we had the clear plastic containers, which were not recyclable and just went into the garbage. So we are trying at least to make advances, however small they may be, as time goes on.

We have had a fine paper and a newspaper recycling program for many years. We have had, as I say, the blue box program for glass and now the polystyrene recycling.

The phase for food services is the whole business of composting and the collection of the wet waste from the kitchens. Our main problem there has been lack of space. I think some of you have toured the kitchens before we renovated half of it, and the space was so tight and still is in some areas that there was not even room for the large recycling containers we wanted. So as we renovate, we are trying to build in better collection procedures for the food waste as we go through.

Leftover food from catering that is still usable goes to the missions—not to the food banks, because it is prepared food, but at least to some of the missions—and we try not to throw anything away if we can possibly help it.

You now have it, but last November the Speaker sent out a draft statement that incorporates all the things I have been saying today and asked members to give us their comments. In fact to date, we have only had two responses. I think that was perhaps because of the timing, with the new Parliament and staffing situations and then Christmas and the recess.

So I would really appreciate it if even now we could get a few more responses from the members, or perhaps from this committee might be the way to go on that particular draft statement of policy. The Speaker particularly asked for comments on the polystyrene recycling, because we were only contemplating it last November. However, we have gone ahead with it in the meantime. I think that is about all I had to say at this point. If anybody has any other questions.

**Mr O'Connor:** Just two comments. One could be perhaps the use of some sort of cup for the people who do have offices here, members' staff, that they could take with them to the cafeteria and, perhaps as an incentive, even be a nickel less or something for a cup of coffee. It might encourage them to bring their own cup with them. It might be a thought that they might be able to use.

**Mrs Speakman:** I did omit that, I am afraid, from my comments. We did introduce that last year. We participated in a program that the Ontario government put on, the glass mugs with a plastic lid. That went to every occupant of the building. Unfortunately, they do not seem to make their



way to the cafeteria every day. One of our problems is they make their way home; they do not stay here in the building.

We have tried that, I think, three times now and we are willing to try it again as a fourth time because I think a lot of the members and staff who are now here were not here when that program was introduced. So we are willing to do it again, but I have to say it met with very limited success. We are still getting mostly walk-through traffic that takes a polystyrene cup and moves on. And we have had a very limited success. The nickel off, I think, is a good idea, or whatever that is—

**Mr O'Connor:** Or reverse it and make it even larger.

**Mrs Speakman:** I will certainly talk to Colin Perry about that.

**Mr O'Connor:** My office is not here.

**Mrs Speakman:** Or five cents more for the polystyrene might be a better idea. Certainly, it was something that was tried, and we are willing to try it again, but I have to comment that it was very limited success in this building and I really do not know why.

**Mr O'Connor:** My office is in the Ministry of the Environment and we are very concerned about it there for obvious reasons. Our cups go up and down the elevator with us to the cafeteria so that we do not have to go down there and take out a paper cup with us.

Another comment I would like to bring to this committee is something that was brought to me in the last session. One of the pages brought it forward to me: the fact that we have drinking coolers all around the Legislative Assembly, and at all of these coolers, there are these little paper cups for dispensing of water. That probably is quite useful in maybe keeping down the colds in the wintertime, but something that was brought to my attention was: are they recycled, and where do they go from there? Obviously, they end up in the landfill, which is a problem. They are recyclable, but they are not recycled. So I wondered if there was any possible way of—I mean, you then have wet paper.

**Mrs Speakman:** I really welcome these suggestions because we, with the best will in the world, design a program and then we discover that—for example, we just introduced the polystyrene recyclable containers, but very few people want to come out of their office, take their cup along and put it out in the hall. They need something that is very close at hand, some better collection system.

The water cooler cups were supposed to go into a paper-recycling bin, but I think what happens is that bin gets moved along and then another little garbage can gets put in its place. So, yes, we have to tighten up these procedures. I agree with you.

**Mrs MacKinnon:** Are these recyclable?

**Mrs Speakman:** They are recyclable. However, this building does not have a plastics recycling program yet in the city; it is in the outlying townships. I know Markham has plastic, I think Mississauga has plastic, but I do not think we have it here yet. Again, it is the next step. We would prefer to use the glass containers; however, our storage problems are acute and we can stack those and get triple

the amount in our coolers as the glass, which does not stack very well. So as we renovate, again, we are making more room for the glass, and if the plastic recycling catches up first, then we are okay. But all of these problems are being addressed gradually.

**Mrs Marland:** In answer to the question: Yes, Mississauga does have all plastics. It was the first municipality in Ontario to accept all plastics: plastic film, margarine containers, Javex bottles and so forth.

I was just thinking, listening to this discussion, that one thing that might be helpful is at least to give all our new members and their staff those recycle mugs, because they were given out in the previous government at the initiative of the young, energetic member for Brampton North, who at that time was parliamentary secretary to the Minister of the Environment. For those of us who have them, they are a real option to use them.

I wanted to say one thing about the drinking coolers, which might be a disincentive to use them.

**Interjection:** Do not tell them.

**Mrs Marland:** No, I think you should know this, because then we may end up with fewer paper cups in the receptacles adjacent to them. When I first came down here, I thought this was marvellous. When I walked past those drinking coolers, I said, "Oh, isn't this great, Crystal Springs water or whatever." I guess I should not say that because that is a trade name. I retract that statement. It was bottled water, in any case, in these large containers, and I thought: "Isn't that terrific. At least we get to drink non-city of Toronto tap water."

One day, when one of the gentlemen was pulling the wagon along with all the empty containers, I said to him, "That is quite a job to get all these water fountains changed over and refilled," and he said, "Oh, yes, it takes us quite a long time to fill these bottles." I said, "You fill them?" He said, "Oh, yes, we fill them downstairs with the garden hose." And that is true, is it not? After we had taken over the building, we discovered that this was so and we changed the garden hose and put a better system of filling. We had the public health nurse in to make sure that it was done appropriately.

**Mrs Speakman:** Yes, it is tap water.

**Mrs Marland:** But the point is, it is tap water, so do not be under the illusion that you are drinking some special water. In any case, I introduced a private member's bill to regulate bottled water, because there are no standards for bottled water in Ontario, and we are safer drinking tap water, if the truth be known.

I wanted to pursue the idea of incentive pricing, because I think that is a terrific idea. Are you parliamentary assistant, Larry?

**Mr O'Connor:** I am parliamentary assistant for the greater Toronto area; the same minister.

**Mrs Marland:** Same minister, of course. I am wondering if perhaps the reason it did not work was that the price incentive was not big enough, because I do not really think that our staff are overpaid, where it would not be an incentive to try to save something. Maybe we could support you in a small price increase in order that you could



give a greater discount for us bringing our own utensils. I wanted to mention all the plastic forks and knives and spoons as well. I realize that there is a cost factor to people walking off with those for their use and not returning them.

I am one of those people who eats in my office all the time, and I pick up my stuff at the cafeteria, but we routinely shuffle it all back down the next day on the same tray we borrowed the day before. But that is easy for me; I am in a handy location to do that. But I really think the idea of incentive pricing is a tremendous idea and I really would support any expansion you can make to that. As I say, if it means you have to go up a little in order to go down more—

1600

**Mrs Speakman:** We can certainly look at that. I would be happy to. In terms of the china and the use of cutlery and china and going back to offices, you are right. It has been a major problem in losses. In fact, it was one of the reasons apparently several years ago that everybody changed to paper and foam, because so much did not return to the kitchen. Now we have what we call an amnesty every so often, where we send the bus boys or bus girls around to all the offices and just say, "Have you any china?" and just collect it. It is a little more work, but we do get, on each one, about five or six wagon loads throughout the building, and if that is what it takes, we are quite happy to do that.

**Mrs Marland:** Then you get all the plates from under the plant pots and all that.

**Mrs Speakman:** Yes.

**Mrs Marland:** I actually use my own knife and fork, but I do use the plates for the hot meals.

**Mrs Speakman:** I think there are a lot of things we can do to improve on what we have already started, and I would really like to hear any of those suggestions and see if we can make it even better. One of the other things we have done in the dining room, you have probably noticed, is that we have got rid of all the individual creams and sugars and things like that and use bowls and jugs and these large jugs here, and that has saved a tremendous amount of waste.

**Mrs Marland:** Yes, I am sure. I am just looking forward to when the dining room gets on to a health kick for all the members whereby it starts offering margarine instead of butter. Margarine keeps better, and whenever there was margarine in the small plastic containers against the butter in the small plastic containers, the margarine always went first.

**Mr O'Connor:** We have to take care of our farmers.

**Mrs Marland:** They make margarine. They grow the soya beans. I know what goes into margarine, Larry.

**The Chair:** Are there any further questions? I just have a comment. I noticed lately in the cafeteria when you go downstairs, and especially if you are in a committee meeting and you do not get out till about 12:30 and you run downstairs and grab a sandwich, there are generally two very long lineups and only one cashier on. I was wondering,

is there some way of putting a second cashier on at those peak times to speed through the—

**Mrs Speakman:** We had added an extra workstation about a year ago over at the back and it is supposed to be staffed when the lineup gets long. If that is not happening, I will check it out, because that is why we put the extra workstation in, to avoid that long lineup. So I will go back and see what is happening.

**The Chair:** Okay, thank you. Any further questions?

**Ms S. Murdock:** Just one. I just noticed on the last page of the memorandum to all members from David Warner, the Speaker, that at the very last line, it says, "staff and visitors...any suggestions from...which will improve our efforts." There is nothing downstairs for visitors who might have a suggestion. I do not know what you would have, though. I loathe the idea of a suggestion box. But there is no indication down there that if a visitor had a suggestion they could put it in anywhere, and yet they do use the cafeteria oftentimes.

**Mrs Speakman:** That is right. I guess we will work to make everybody more aware of the environment and ways to protect it. Were you looking at the draft policy statement?

**Ms S. Murdock:** Yes.

**Mrs Speakman:** Yes, okay. I understand your point. We can easily do that.

**Ms S. Murdock:** Because I will bet you there are people who would have a wide range of ideas that none of us would even think of.

**The Chair:** Thank you, Barbara, for coming along.

**Mrs Marland:** You did not bring any snacks or anything?

**Mrs Speakman:** If you invite me back—

**The Chair:** We are in a time of recession.

**Mrs Marland:** Mr Chairman, you know the one thing I would like to do is—I am not sure of this lady's title.

**The Chair:** She is the executive director of assembly services, Barbara Speakman.

**Mrs Marland:** Okay. You know one thing I would like to put on the record, Barbara, is that the meal our kitchen and our dining room staff presented to the members on 18 March was superb, both the service, the way the tables were set, and the meal content itself. I really think a commendation should go back, Mr Chairman, from this committee, since we are the committee responsible for services to members. I have written to the Speaker to thank him for the idea of hosting it, but the work and the planning that must have gone into that meal and the end result were just excellent, and I think we would like to convey, through you, Mr Chairman, the appreciation of all the members for the work and the planning and the end result, because it was a delicious meal, beautifully served.

**Mrs Speakman:** Thank you. I will also pass on your comments, because they would love to hear that things were successful.

**The Chair:** I will make sure it goes out to that effect.

**Mrs MacKinnon:** We did not even mind the interruption of being evacuated.



**Mr O'Connor:** The barbecue?

**Mrs Marland:** That was before I got down, I guess.

**Mr O'Connor:** There was a brief period where we had to recess while we went to the front steps because some of the new kitchen facilities—

**Mrs Speakman:** It was not actually a fire. To alleviate your concerns, it was just smoke from your barbecuing and the duct had not been completely closed after we had cleaned the duct, so the smoke went into the centre attic and of course all the alarms went off, so at least our alarms and evacuation procedures work.

**Mr O'Connor:** Work quite well, so we know we are safe there. Some traditions are worth keeping, though.

**Mrs Marland:** Mr Chairman, this is taking advantage of Barbara, but are you the person who is working on our pin?

**Mrs Speakman:** Yes, one of my staff is working on that.

**Mrs Marland:** What stage are we at?

**Mrs Speakman:** Karyn Leonard is working on it and her staff. I believe she has several designs at this point and she is getting prices, so we are fairly close.

**Mrs Marland:** Good, great. Well, the committee is looking forward to seeing the designs and having a report and being part of that decision-making, as you know. Thank you.

**Ms S. Murdock:** I know that Margaret and I are in agreement on this, but my suggestion was to put a little hook on the back so it could be used as a pendant as well.

**Mrs Speakman:** Yes, that suggestion went in to Karyn, so she is aware of it.

**Ms S. Murdock:** Oh, good.

**The Chair:** Any more questions? Thank you, Barbara, for coming along this afternoon.

#### MEMBERS' ADVERTISING

**The Chair:** Moving on to item 2 on the agenda, that is the discussion around the House of Commons report setting out the five principles, with particular reference to the recognition that partisan activities are an inherent and essential part of the activities and functions of a member. This is in connection with householders and advertising by members, member services.

**Mr Owens:** I want to correct what I think is a wee bit of misinformation. At the subcommittee today I pointed out that it is not only householders that we should be concerned with. We have seen over the past several months members standing up and pointing the accusing finger at other members for alleged partisan activity with respect to their signs and householders. It was my intent in bringing the suggestion to the committee that we deal with all levels of "partisan activity," which you know, again, in terms of signs and in terms of householders. The guidelines that we have before us from the House of Commons clearly look at other areas than householders.

**The Chair:** Thank you for that point of clarification, Mr Owens. I guess the whole question is open for discussion at this time.

**Mr H. O'Neil:** I do not think we are proposing, though, that certain things are going to happen. In other words, if I had my "Hugh P. O'Neil constituency office, Liberal member", I do not think we would be pushing stuff like that, would we? In other words, there would not be any designation as to what political party you were either on your signs or on the literature that you send out.

1610

**Mr Owens:** I think there would be no onus on any member to identify himself or herself with any political affiliation. What it would do, though, it would remove the problem—if somebody wants to put a trillium on their sign, if someone wants to put an L on their sign or—

**Mr H. O'Neil:** I think there are going to be things that you do in the day-to-day operation where you were going to be involved in some political way, with a phone call or something else like that. But I do not think it is to our own advantage to do it, because we serve people of all parties, and I think it would deter people from coming to see you if we were to push it too far. I do not know what the happy medium is to give you some little bit of leeway, but I do not really feel we should push that too much.

**Mr Owens:** I guess, again, in terms of what you want to do personally in your constituency and what I would do in mine would be left up to the individual member, and clearly I am certainly not in favour of conducting membership drives or things like that out of the office. But the simple things such as we saw in Ottawa, a sample of a letter that came out from the Liberal caucus, and there was in the left-hand side, "Liberal critic for da, da, da, da." I mean, that is something that is tastefully done and they have applied the principle that clearly, just because you become a member in this House does not necessarily mean that you have burned your particular membership card in your party, and how you chose to use that in your own riding depends on you and how you feel your constituents will respond to that.

**Mr H. O'Neil:** In these five points we are talking about, that we have copies of, are there still guidelines for literature that they may put out in the householder, as to what—I know we have guidelines. Do they have them, too, that are a little less stringent?

**The Chair:** I understand there are some guidelines but they are somewhat less stringent. But we can ask research staff here to come up with those guidelines for us for our next meeting.

**Mrs Marland:** Mr Chairman, are we planning this afternoon to discuss all aspects of partisan designation in our offices, our literature, our letterheads, our cards? Where are we going to go with this discussion, because there is a lot we can cover and I just want to know—we have a lot of items to discuss this afternoon. If we are going to discuss the whole broad gamut, is it our goal to set parameters or is it our goal to, say, accept the federal? What is it that you want to do?

**The Chair:** I think what we are attempting to begin this afternoon is to begin the discussion around this issue, because it is an issue that is not going to be settled in one



afternoon. It encompasses many, many aspects, and as many members may wish to appear before this committee and give some input—

**Mrs Marland:** Maybe, then, what we should do is have Andrew do some research for us with a synopsis of what exists in other provincial legislatures so that we can have some point of reference, rather than just our own personal points of reference at this point, because I think we all have a personal opinion on what could or could not be done or should or should not be done. So maybe we would be better to start with a point of reference with some research. Part of that can be the federal guidelines.

It is interesting how, when you start to read the federal guidelines, the section (c) that deals with the partisan activities, you can read so much into it if you want to. But especially in light of some of the challenges that have been made in this session of our Parliament, referring to outdoor signage, that kind of thing, I think it would be very good for this committee to invite other members to tell us what their opinions are, and then for us to draw up a set of guidelines as a recommendation as an end result, because at the moment we do not have guidelines, and I think, in fairness to the public, whose money we are using, we probably should have guidelines about what we do in terms of our partisan activities and publicizing those activities and those affiliations.

I think the ultimate goal for us, as a Legislative Assembly committee responsible for members, is that we want to be as highly professional as we can. We want every member in the House, regardless of party, to be respected in a highly professional manner. And the way that is done is where we make sure that we do not put ourselves in a position that might be in conflict with that goal.

It is tough enough being a politician. With the kind of thing that went on in British Columbia yesterday, we all have to be so careful that our own individual actions do not tarnish all of us. And on a non-partisan basis, I have to say that I regard my colleagues in the House, regardless of party, to have the same goals and responsibilities that I have. And I think our credibility and our personal integrity stands when we look at what we do as being in the best interests of all the people we represent, and all of those people we represent are of all political stripes and no stripes at all. It is very sad if the public perceives us as being a PC member or a Liberal member or an NDP member, and out of their lack of knowledge they think that in order to deal with us they almost have to pretend that they are part of our party.

There are members of the public out there who do not realize that when you are elected you serve everyone, not just people of that same party affiliation, and if we develop a guideline that makes that point very clear, because we are not promoting our own party through the use of public funds, through advertising, notices, householders' outside signage or whatever it is, then I think we will all end up better off. But I do think it is a very big subject to get into this afternoon, if indeed you want to deal with these other items on the agenda.

**Ms S. Murdock:** In relation to setting up the schedule, I agree that there should be something set up. For instance, I am thinking along the line of time designated for specific areas, for instance, signage or newsletters, and break down the areas in which we would be involved or that there would be some partisan involvement or possible partisan involvement, and look at each of those areas separately and actually schedule in time allotments for those discussions. I think it is a good idea, and then that way write up a report. I would agree with that.

That other thing is that in regard to the federal newsletter, for instance, in my area, when it is an annual meeting or something for the riding association they are not allowed to notify that it is an annual membership meeting. They can call a general meeting for the public within the newsletter and announce it in that manner, but they are not allowed to direct it as a New Democrat or a Liberal or a Conservative function. So even though it has much more latitude than we have, there are still some restrictions on what they can do in terms of partisanship, if there is such a word, and rightly so, I think, in terms of what Mr O'Neil was saying earlier; many times I have had to tell constituents, both when I was working as a constituency assistant and now as member, that once elected it does not matter who you are for. You get calls saying, "Well, I voted New Democrat," or whatever, and you say, "Well, it doesn't matter, because I would help you regardless of whether you even voted." I think that is important, to keep that separateness in the constituency office. That is all I had to say.

1620

**Mr Owens:** Just to take Sharon's idea a step further, I think it is reasonable to separate the issues we want to deal with. Perhaps we can take these areas and then invite our colleagues to come in and make commentary on these issues. I think Margaret is quite correct that we should not sit in isolation and decide these guidelines, that we clearly need to have outside consultation from our colleagues, so if we can look at drafting some kind of notice or deciding exactly which areas we need to address and then move on to the other items of the agenda.

**Mr H. O'Neil:** I think, too, that we have seen what has happened in the federal Parliament on these general principles they have come out with. We may want to fine-tune them more, but I do not think it would hurt in principle—and you may want to discuss this for a minute—to say that we see these five general principles here as things we should be looking at. We should leave ourselves, as members, some leeway. In other words, I suppose that even if we were to call home on our credit card or on our new number, we could be seen as doing something we should not be doing. These principles, I think, have been well-thought-out, and I think we have to give ourselves some sort of protection, too, so that we are not criticized for things that I think we should be allowed to do as part of our job. I do not know where you draw the line there. But even if we were to say that we were looking at this and we think those principles in general, although we may fine-tune them, actually set forth some protection for us—I do not know what the rest think of that.



**The Chair:** So is it the opinion of the committee at this time to draft a memo to all members indicating that we are going to review this and include the five principles and outline the various areas we want to have a look at, such as the suggestion from Mrs Marland and Ms Murdock and Mr Owens, and wait for a response to come back from the members and then schedule those members in at a time to appear in front of the committee?

**Mrs Marland:** Yes, I think we should communicate with the members, but I think we have to give them some examples: you know, what are their opinions about party designation on stationery, outdoor signage in an office, householders?

**Mr Owens:** Yes, those are the kinds of things they are talking about as listing the items we wish to have their commentary on.

**Mr H. O'Neil:** And the present guidelines too. In other words, what the present guidelines put forward.

**Mrs Marland:** I think that is a good idea.

**Mr H. O'Neil:** And maybe include even these five principles—I guess you would anyway—

**The Chair:** Yes.

**Mr H. O'Neil:** —for them to have a look at as to what the federal people are looking at. I think that memo there is quite a good one, really.

**Mrs Marland:** These five principles from the feds actually do not deal with partisan designation. They are very vague. They are probably planned to be very vague.

**Mr H. O'Neil:** It also says in that memo that they are not finished. They are continuing to look at it, and maybe we should ask our research people to have a look at anything that has changed since this came out, anything else they have decided or are looking at, for our own information also.

**The Chair:** I will then ask the clerk and the research people to put together a package with a memo for review by this committee for next week. Any further discussion of this topic?

#### MEMBERS' SERVICES AND FACILITIES

**The Chair:** Moving on to item 3, the schedule of committee business.

**Mrs Marland:** Are we also discussing things like Mr Giorno's letter and these other communications we have had from members? What does that come under?

**The Chair:** Yes, we can discuss the draft letter to our friend. I do not think it has been scheduled to discuss the other issues of members' services today. I notice 18 and 15 May and 29 May have been set aside to discuss those issues.

**Mr H. O'Neil:** There is only one problem. It is my understanding that the Board of Internal Economy is supposed to have dealt with some of those things that have been raised in the letters last week. It did not get to that portion of the meeting, and there is a meeting coming up 15 April or somewhere around there. I just wondered if we should not maybe touch on those today, Mr Chairman, to see what yourself and the rest of the members think and maybe make a recommendation to the Board of Internal

Economy before it either approves or turns down some of the same things that are in these letters.

**The Chair:** If that is the wish of the committee, sure.

**Ms S. Murdock:** I do not know what the members' letters were discussing.

**Mrs Marland:** There is a package attached to the agenda, where they have responded with ideas about things they would like.

**Ms S. Murdock:** Well, I did not get it.

**The Chair:** It was sent under separate cover, to the offices.

**Mrs Marland:** Oh, is that what I brought with me? You see how efficient I was—

**Ms S. Murdock:** You are.

**Mrs Marland:** Only because my staff handed it to me on my way here. But when I read some of these letters, Mr Chairman, I think it would be good if Mr Arnott's staff could go through them and respond to some of the things that are—just as an example, Paul Klopp is asking about answering machines for his constituency office and those are already eligible to be paid for out of our constituency budgets. I am just giving that as an example. I am actually on my third answering machine, because they take a lot of beating, but I think for the sake of dealing with these recommendations from individual members, it would be easier, since the letter is to the committee, to answer them if it is something as obvious as equipment that they are already eligible to claim on their constituency budgets. It also means the member can go ahead and order it right away and know he can get on with it, because he said he wants a programmable design that they can phone in and change over the phone. That is what we all need and that is what I have and it is a legitimate expense.

So I think that where there are very direct questions that we can answer now, based on the parameters for legitimate expenses, those people could have the benefit of making those purchases.

**Mrs MacKinnon:** I want answering machines in the worst way. However, I want them in the constituency office, I want them up here, but they have put in some type of great big cable about this big and they tell me there is not an answering machine around that you can fit it on.

**Mr H. O'Neil:** You mean, in your constituency office?

**Mrs MacKinnon:** In the constituency offices and here.

**Mr H. O'Neil:** I had the same problem, because the first point here mentions about an outdated phone system in our offices, but there is a connection you can have. I do not know whether Bell has to come in or you can have somebody else come in to your constituency office and hook it up, because I just did it about six months ago.

**Mrs MacKinnon:** Even on these big—

**Mr H. O'Neil:** Yes, there is a connection that can do.

**The Chair:** To clear up that point, simply phone Bell and they will come out and they will put in the connection for you.

**Mr H. O'Neil:** I noticed several others here, whether you want to touch on them. The phone system, I think, is



outdated in our constituency offices. You mentioned one reason. There are some other ones there that are mentioned. Margaret mentioned the answering machine. You can pick up a good answering machine for around \$100 and it can come out of your \$10,400.

1630

I guess one of the things that was to come before the Board of Internal Economy was a computer and a printer for one of our offices, and it was not dealt with and it is coming up in the middle of April. I would love to see a recommendation come from this committee. I do not know whether it is fair or justified to ask one for each staff member. I do not think it is. I think if we have one computer and one printer for our office, that is all we should ask for at this point. I know I have bought one out of my \$10,400, out of a couple of years' budgets, so if you need an extra one, there is always some way to work it half out of this year and half out of next. But I would love to see a recommendation come that we supply at least one computer and one printer and the setup that goes with it for at least one of our constituency—

**The Chair:** I think that actually was a recommendation, that each permanent staff person would get a computer. Whether the Board of Internal Economy follows through on that or not, I do not know.

**Mrs Marland:** It is my understanding that one terminal and one printer has been approved for the constituency offices.

**Mr H. O'Neil:** No, it is in estimate approval. It is coming up in a couple of weeks.

**Mrs MacKinnon:** No, it has not been approved, not for constituency offices.

**Mrs Marland:** Let's deal with that today, because it is the most absurd thing not to have a computer in our constituency offices.

**Mrs MacKinnon:** I think it is absolutely abominable.

**Mrs Marland:** We are dealing with constituents who have them in their homes and we are still back in the 18th century. It is not the cost of them; it is the cost of not having them. It is the cost of the paper and the inefficiency that is generated by not having a computer in 1991 in our constituency offices. If you want a motion or if Mr O'Neil wants to make a motion, I will second it.

**The Chair:** I think Ms Murdock wanted to ask a question here.

**Ms S. Murdock:** Yes, in regard to the telephone, it is very true what they are saying, because we had it transferred over and yet your answering machine is put on a separate jack. But Bell Canada does it. It is just expensive. It is just expensive. When Bell Canada comes in and does it, they charge you for a service call that is specifically geared for that change alone unless you are getting your whole phone system done.

The other things is, the finance branch and I have been having an ongoing battle in regard to the phone system. I am surprised that my letter is not included in here, because I did not realize that I was going to come here, particularly this year where we were newly elected, and I had an interim

office and, as a consequence, had a phone installed, one phone, until such time as my office was built.

When it was rebuilt, there was a delay of a couple of days and the finance branch informed Bell Canada that I was getting the standard three lines, which it allowed, and it did not matter what I wanted at the time, because we had not finalized decisions with Bell. So they have now installed the old system, which is not what I requested, so I requested what I wanted. It was a \$418 charge to come and replace that system, and finance branch is taking that out of my \$10,400, which I am absolutely against. I am fighting that and I just want this panel to know, so I have vested interests in this.

The other thing is that I think fax lines are not included on our phone system under the present system and they should be, like point 1 under Paul Klopp. There is absolutely no reason in this day and age that we should not have fax line included on our phone systems.

**Mrs Marland:** At present you have to give up one of your three lines to have it.

**Ms S. Murdock:** That is right.

**Mr H. O'Neil:** Or you are charged extra.

**Ms S. Murdock:** Or charged extra out of your \$10,400.

The other thing I wanted to say about answering machines coming out of your \$10,400: It is very true you can get them cheaper at different places, but if you go out to Canadian Tire or whatever and buy your answering machine it comes out of your actual operations budget, and if you order it from the catalogue it does not come out of that budget. It comes out of—I do not know—the Legislative Assembly supply and services. It is a different budget. I just discovered this and it makes a difference. Do not ask me how, but the finance branch says where you order it makes a difference, so I would suggest for those people who are thinking of doing that that they consider, even though the cost in the catalogue is horrendous for what you are getting. It is a good answering machine, but \$245 I think is a little outlandish.

**The Chair:** Could I make a suggestion to the committee here that we have one more meeting before the Board of Internal Economy, which I understand is meeting 15 April, that we set aside next week to discuss these issues and the computer issue and do it in a comprehensive way. In the meantime, we will ask the clerk and the research people to go through these letters here and remove what is already approved and get down to some of the issues we have to discuss.

**Mr H. O'Neil:** Could I also ask if maybe the clerk and research can have a look at what it is the Board of Internal Economy is dealing with on the 15th and what its feelings are towards—I guess it does not really matter what its feelings are because we are going to make recommendations. I would like to know what they have on the agenda and what they are going to deal with, because some other things have been raised here right now by Sharon on this.

**Ms S. Murdock:** On that point, I know it was supposed to be raised at all caucus meetings, because it was certainly raised at ours, the recommendation being that



there would be a computer terminal at each permanent staff person in your constituency office except the member and in your legislative office. That was going to be at the request of the Board of Internal Economy. There were a number of other things. All caucuses were supposed to be presented with that financial statement and request form.

**Mr H. O'Neil:** But we received a list. There were feelings that some things that were listed there would be approved and some of them would be turned down.

**The Chair:** Maybe it would be a suggestion that each respective party would go back to their House leader or whoever is doing these negotiations and get a sense from their party people of what is happening and bring it back as well next week.

**Ms S. Murdock:** Just so you know, Margaret, each caucus was presented with the financial statement or the request we were going to be asking for members' services to the Board of Internal Economy. I know our caucus was presented with it, he was saying his was, so yours probably was, but we are to go back and check to see what exactly they were requesting and what our caucus agreed with or disagreed with as the case may be for next week's meeting.

**The Chair:** We will set aside next week to deal with these issues and put together a comprehensive letter to go to the Board of Internal Economy for 15 April.

**Mrs Marland:** I am sorry because I will not be here next week, but you do not want a motion today just to deal with the computer and the printer in the constituency office?

**The Chair:** We can certainly entertain the motion today and incorporate that motion in the letter to the Board of Internal Economy.

**Mr Owens:** I think the motion would be redundant. I think the approval is going to go through, and I am 99.99% sure of that. Some of the other things on the list, as I recall: I think we decided that we were not going to take the TV and the cable installation and stuff like that, but the computers were definitely a go. That and fax machines as well were on the list.

**Mr H. O'Neil:** It was my understanding the fax machine would be approved for the constituency office but it would not be approved for the Queen's Park office. I guess I have some questions on that, too. Maybe it is too exorbitant to ask for a fax machine for every office. Maybe there should be one for two or three offices that are together or something like that. I know we have one fax machine to serve about eight or 10 of our offices up on the fourth floor. That is members' offices and the support staff. You go to fax something out and you may have to wait half an hour because faxes are coming in from different places. It is a real inconvenience. I think that was going to be turned down by the government, and maybe there is a happy compromise that can be—

**Mr Owens:** Maybe what we need to do with respect to that request is to—I am not even sure how you would do something like this—look at a usage study. Up on the fourth floor, how many members do we service, about four, five?

**Mr Cooper:** No, six.

**Mr Owens:** Six members upstairs. The machine is on memory because of all the stuff that has been fed into it because of delays of the incoming; we face the same kind of problem, that you stand there and wait until the memory is cleared. So, if we can look at some type of usage study to maybe—I am not sure that I would agree with a fax for every office. I do not think you would use it.

**Mrs Marland:** Can I just say something fast? The thing about something like this, Steve, the example of the fax machine, is that those have not come out of the members' allowances. Currently they come out of the caucus budget. Each caucus has its budget, and it is up to the individual caucus executive director to make the decisions based on what the caucus wants. So if you want 20 fax machines for all your members, they can buy that out of their caucus budget, as can we.

I think our focus has to be on what we want to achieve for individual members' offices, and I would not go for asking for a fax machine for every individual member's office. But if my caucus is overloaded, as the example Hugh gives, then I would go to my caucus person and say, "Look, we need another fax machine down this hall," or whatever. That money is already allocated to us by the Legislative Assembly. I really think our focus, Mr Chairman, has to be on our individual offices, and particularly the constituency offices.

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**Mr H. O'Neil:** Of course, there is another development with that, too, and that is that if the individual computers and printers are okayed for the constituency office, they have a modem, which can go back and forth and almost be used like a fax machine. So that should be taken into account, too; that may solve some of the problems.

**The Chair:** As I understand it, the proposal to the Board of Internal Economy was one computer for each permanent staff person, excluding the member, I think.

**Mr Owens:** Is there any chance, Mr Chairman, of increasing that 0.5 staff member to a whole body?

**Mr H. O'Neil:** Anyway, it is my feeling that the clerk and the research people can see what is on the agenda for the Board of Internal Economy and we can check with our own people back in our caucus and we can come back next week and review suggestions and see what we should look at.

**Mrs Marland:** Just remember that we are here for a long time, and if we do a better job the public is better served.

**The Chair:** A point well made. Any further discussion?

**Mrs MacKinnon:** Am I to understand that these answering machines are a go?

**The Chair:** Always have been, yes. It has to come out of your budget.

**Mrs MacKinnon:** Yes, I understand that. I do not mind that at all, as long as I know it is allowable.

**The Chair:** It is allowable. It is an allowable expense.

**Mrs Marland:** So are car phones. There is a letter in here about a car phone, and car phones are allowable too.



**Mrs MacKinnon:** They get scared about me driving around in the car and not having a car phone and no way to reach them. It is scary.

**The Chair:** Any further discussion on the topic?

**Mrs Marland:** Sorry to do this, but there is a letter in here that talks about individual television monitors at our desks in the House. I do not think I need to say any more except that I have such confidence in this committee that I am sure we would not even consider spending money on such a ridiculously frivolous item. I mean, we do not need any more television sets in this building.

**The Chair:** I am sure the committee will give that serious consideration.

Moving on—Everybody has the draft response in front of them. Are there any comments on that?

**Ms S. Murdock:** There's a spelling error.

**The Chair:** We will note that. A computer error I guess, Sharon.

**Ms S. Murdock:** Third paragraph, second line, last word.

**Mrs Marland:** Oh, I think I would leave out the last paragraph. You know why? Because he was discussing members' calendars. I think we will just leave out the last paragraph.

**The Chair:** I think he made reference as well to the federal members.

**Ms S. Murdock:** I thought he made reference to one of those phones.

**Mrs Marland:** Oh, did he?

**Ms S. Murdock:** Yes.

**Mrs Marland:** Okay. All right. Great.

**The Chair:** Any further business?

#### SCHEDULE OF MEETINGS

**The Chair:** We also have the suggested schedule of meetings for the committee through to May. Any comment?

**Mr H. O'Neil:** The only suggestion I would make on that for consideration by the committee is that we are going to look at some more freedom of information presentations. I think we are going to find that we are going to have something from that at every meeting, and we should leave ourselves some part of the agenda to deal with current issues or other things we can refer to rather than scheduling in a whole afternoon for certain hearings. Just as a suggestion.

**The Chair:** Okay, it is a suggestion.

**Mrs Marland:** Was there a subcommittee meeting today?

**The Chair:** There was. I was not at that subcommittee meeting. I had another event. Mr Owens, you were at that subcommittee hearing?

**Mr Owens:** Put the blame on me. There are other members here, Mr Chairman.

**Mrs Marland:** I am not suggesting that we have to have the subcommittee report at this point. I am just asking, was there a subcommittee meeting? Because, I had heard

that there was and maybe after we adjourn, we could have the subcommittee report and then decide what to do with it.

I notice in looking at the schedule of meetings that we have four meetings on the freedom of information legislation and then three on members' services and facilities. I agree with the comments of Mr O'Neil that we should perhaps include both, but who are we looking at having on those four meetings on the Freedom of Information and Protection of Privacy Act?

**The Chair:** I will ask the clerk to reply to that.

**Clerk of the Committee:** There were four groups that were outstanding from the two weeks of hearings in February. The committee, in addition, had spoken of inviting SkyDome representatives, possibly the minister or ministry people from Community and Social Services. In addition, I understand that the Information and Privacy Commissioner's office has prepared a response to or comments on the presentations made by all groups that have appeared to date. I am not sure that would involve an oral presentation of that response or just a delivery of a written document. I will ascertain that tomorrow. Finally, there was a thought that the committee would want to have time to discuss what it has heard to date and determine what it does next.

**The Chair:** Any further comments? Of course, like all scheduled meetings, it is very tentative. It can change rapidly. Any further comments?

#### MEMBERS' SERVICES AND FACILITIES

**Mrs MacKinnon:** I notice on this one letter from Marion Boyd that the use of taxis is a legitimate expense in the riding. Was there any thought being given to deal with that today?

**The Chair:** No, not today. That is an issue for a further meeting. Are there any other items that any member wants to bring forward at this time?

**Ms S. Murdock:** Is it my imagination or is it cold in here? Because I am finding it very chilly. My hands and feet are freezing.

**Mrs Marland:** Usually it is too hot in here.

**Mr H. O'Neil:** We were discussing at the breakfast meeting they had this morning—Steve and a couple of others—were talking about the birth certificates, and I take it now that that has been pretty well resolved.

**The Chair:** I understand that has been resolved. The MPPs' station will continue; I think the expanded hours, if I am not mistaken, as well as the expanded facilities for our members and facilities for members for the public will as well.

**Mrs MacKinnon:** There was a letter that came to my desk in my office this morning.

**The Chair:** There should be a letter going out soon.

**Mr H. O'Neil:** Mr Chairman, I think it would help to have the committee send that letter. I personally would like to thank the minister for making that change.

**Mrs Marland:** Where are we with something as simple as having the drop-off location for dry cleaning for members?

**The Chair:** I was not even aware we had a—



**Mrs Marland:** Actually, probably some of those responses went to the Speaker when the Speaker was making overall plans for necessary changes to the building which might or might not include other facilities of the tonsorial category. The male members at present have access to tonsorial specialists and we do not. But far more major than that is, we do have—

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**Mr H. O'Neil:** What was that service we have that you do not? I do not even know anything about it. What is that?

**Mrs Marland:** A barber shop. Someone in one of their letters here makes a very valid point about the fact that our banking machine only deals with withdrawals. I think that is a very legitimate question and I think the bank, which in this case happens to be the Royal Bank, is very lucky to have that machine in our building and I think the least we should do on behalf of our members is ask for a full-functioning machine in terms of a banking machine.

Also, I think we should ask for a little corner in that hall—there is room downstairs around where the barber shop is—to build a little kiosk type of place where we could drop off dry cleaning. When you think of what time most of us come in here in the morning and what time most of us leave, we simply do not have the personal time to do something as necessary as get to the dry cleaners very often. I think it would be great for this committee to make that recommendation, and it is not an expensive thing because it may well be that any dry cleaning company that is asked to give a tender—if that is the requirement to go through a tender process—could pay for the cost of erecting a little kiosk and they can pick their stuff up from here and take it to their plants two or three times a day. I think it would be a great service and many members and staff would appreciate it.

**Mr Owens:** I would like to make a comment with respect to the bank machine. Correct me if I am wrong, but I think the problem is one of technology, that if you have a Royal Bank card you are able to access full service. However, I have a different card, not to do any advertising, so I

can only withdraw; I cannot deposit. Again, it is a technological issue that the bank is on line to give you the withdrawals, but in terms of being able to access your account at a different bank from the one we are dealing with. I do not know if the technology exists in the automatic teller machines. It is not that the Royal Bank is not wanting to provide the service; it is just technologically not feasible.

**Ms S. Murdock:** With respect to what Mr Owens has said, I do have a Royal Bank card and it is withdrawals only. You cannot deposit, unfortunately. I agree, there have been many times when I wished I could have done other transactions, pay bills or whatever, and could not do that. Our schedules are hectic enough that it is difficult to make it to the bank during their hours to pay your Bell Canada before they come hounding you.

**The Chair:** I was wondering if we could ask the clerk how we go about looking to see if we can get that machine upgraded and possibly even look at getting further machines in the building maybe from other banks, how we would go about doing that. Maybe you can come back at a further meeting with that information.

**Mrs Marland:** And the dry cleaners.

**The Chair:** And the dry cleaners. We will look at that.

**Mr H. O'Neil:** Since I lost my cabinet post I am thinking of taking cleaning in, so maybe I can—

**The Chair:** Margaret, you raised an interesting point that we may have had members write to the Speaker about services they would like to see improved or added here. I was wondering if a letter went from this committee to the Speaker outlining what we are doing here and that if he has letters from members about services if he would like to forward them to this committee for consideration.

**Ms S. Murdock:** Or the other thing is he may already be proceeding on some matters and it would be nice to know that we are not duplicating efforts here.

**The Chair:** He may like to communicate that. Any further items? We have an item to deal with in camera, so at this point I would like to go in camera.

The committee continued in camera at 1655.

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## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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**Substitution:** O'Connor, Larry (Durham-York NDP) for Mrs Mathysen

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Publications

M-10 1991

M-10 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 10 April 1991

### Standing committee on the Legislative Assembly

Review of  
Freedom of Information and  
Protection of Privacy Act, 1987

Members' services and facilities

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mercredi 10 avril 1991

### Comité permanent de l'Assemblée législative

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée

Services et facilités  
à la disposition des députés



Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
Greffier : Douglas Arnott

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 10 April 1991

The committee met at 1548 in room 151.

### REVIEW OF FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

**The Chair:** I call the standing committee on the Legislative Assembly to order, seeing a quorum present. I have a notice of substitution, Dianne Poole for Carman McClelland.

There have been a number of items distributed in the last couple of days to the members of the committee, and I will ask Andrew to give us a summary of the review of the freedom of information and privacy.

**Mr McNaught:** I will not go through it in detail. You just got it today, I assume, entitled Review of the Freedom of Information and Protection of Privacy Act, 1987: Summary of Submissions (up to March 31, 1991). Have they been distributed, Doug?

**Clerk of the Committee:** Yes.

**Mr McNaught:** I begin with a summary of the presentations made to the committee by the Management Board of Cabinet and the office of the Information and Privacy Commissioner. The FOI branch of Management Board was represented by Frank White, who is the director, and he simply outlined how the act operates and the functions of his branch. He cited some statistics on the first three years of operation, but when Mr White was asked if he had any specific recommendations he would like to make, he declined and suggested that perhaps the Chair of the Management Board would be the best person to make any recommendations on behalf of the government. So I simply outlined his presentation there, just to refresh your memories more than anything else.

The commissioner's office, as part of its presentation, brought along a number of studies in those big black binders, and I have also described those for you in the summary. The commissioner's office gave its assessment of how the act has been functioning to date from the perspective of the commissioner's office. You will recall that the commissioner's office made 44 recommendations for changes to the act. That is contained in the paper they supplied called Suggested Changes to the Freedom of Information and Protection of Privacy Act, 1987. I have also included those recommendations in this particular summary so you have everything in one place.

The next section is the summary of recommendations on page 8. These are a summary of all the recommendations made by witnesses who have appeared before the committee or who have submitted written briefs to the clerk. You will see that after each recommendation there is an abbreviation of the group or individual that made the particular recommendation and you can refer back to the

section on witnesses at the front of the summary to identify the witness who made the particular recommendation.

Now you will notice that I have simply given you the recommendations and not the reasoning behind them. You can go to the individual briefs if you want to get a further discussion of the reasons behind each recommendation. If the committee wishes, I can prepare a background memo on any particular recommendation that catches your eye or whatever and I can bring that back to you in a week or so.

I have organized the summary under what I felt were the major issues, but of course the committee might have different ideas of what the major issues are when they are drafting a report, so you are not bound by the headings I have set out here.

Just one last thing: Note that the issue of police and the news media, which figured fairly prominently during the hearings, is included in a separate section at the back under miscellaneous items. That is on page 29. Technically, it falls under the law enforcement exemption, which I referred to briefly on page 12, but I felt the committee seemed to want to devote special attention to that particular issue.

I would suggest that you just go through it. A lot of these recommendations are technical in nature and you will have to go back to the actual brief to put it in context, I guess. I understand that the commissioner's office has prepared a response to some of the recommendations that were made by witnesses and that should be ready, I think, next week some time. That would be useful to have together with this summary.

That is all I have to say about the summary.

**The Chair:** Any questions? I just remind committee members that during the next two weeks, we will be hearing the final witnesses that we have not had a chance to hear yet on the Freedom of Information and Protection of Privacy Act. They will start appearing here again next week. I understand CUPE and Ontario Public Service Employees Union are among the witnesses appearing next week. Any further comments?

**Mr H. O'Neil:** In other words, we can have this to have a look at it. How soon do you think we may be getting freedom-of-information people?

**Mr McNaught:** I think next week. Do not hold me to that, but that is what I was told by a person I know there. It was initially going to be a lot more detailed response, but I think they have decided to narrow it down quite a bit.

**The Chair:** Would it be the wish of the committee to have the commissioner here to answer questions in relation to his report or summary?

**Mrs MacKinnon:** I think it would be very helpful.



**Ms S. Murdock:** Would he present the summary and then we could ask him questions, or would we be given the summary and he would come at a later date?

**The Chair:** Hopefully we would be given the summary and then we would ask him to appear in a week or two weeks after that.

**Ms S. Murdock:** Actually, I should not say he, should I, because we still do not have a freedom of information and protection of privacy commissioner.

**The Chair:** Is that agreeable to the committee? Agreed.

I believe the clerk has some updates on some of the outstanding issues for us.

#### MEMBERS' SERVICES AND FACILITIES

**Clerk of the Committee:** Last week committee members received a package of the responses to the committee's survey on what members of the House wanted to see in the way of discussion at this committee on members' services and facilities. The committee asked me to review those and see what responses or status could be presented on those this week.

Before you on your desks today is a memo from Barbara Speakman, executive director of assembly services, who was asked about the possibility of improving the services available through the banking machine in the building. She indicates that will be investigated and she will report back as quickly as she can, along with the director of finance.

The other issue raised at the committee last week, not in letters from the members, was the suggestion that there be a dry cleaning dropoff point somewhere in the building or parliamentary precinct, and apparently this was part of a previous study. Development of that issue was postponed pending further action on renovating the building and seeing what allocation of space there would be in the building, but Ms Speakman indicates there is no reason why that cannot proceed as far as a feasibility study goes.

**Mr H. O'Neil:** Which one of the members raised that, about the dry cleaning?

**Mr McNaught:** I believe it was Margaret Marland.

**Mr H. O'Neil:** From my own point of view, it would be handy and great to have, but when you are talking about—maybe I should wait until Margaret arrives—putting in space—

**Mr Villeneuve:** She is not going to be here.

**Mr H. O'Neil:** She is not? —and somebody to run it and everything else connected with it, how much of a job is it for us to reach wherever we are staying, whether we are home or up here, and take it to some place that is handy to us? I think is one of these frills that we do not really need. I guess there is no harm in having you look at it, but if they think all the members want it, they will likely give to us, and I find a problem with it.

**Mr Cooper:** If I could respond to that, I think the concern of Mrs Marland is the time, if she were coming in really early in the morning and staying late in the evening. Basically, what she was looking at was just a kiosk where

you could drop off; she was not talking about having it manned. You can receive personalized bags where you just drop your dry cleaning off and then it will be returned. It may not be such a space allocation that it would cause a problem.

If I could bring up one other issue right now: When we were talking about the expanded services for the banking machines, I was wondering if we could maybe do a feasibility study and see whether we could not get a full service banking outlet, say, the Province of Ontario Savings Office, but it could be used during regular banking hours and then we would not have the need of the expanded banking machines.

**Mr Morin:** It is right next door.

**Mr Cooper:** Whereabouts next door?

**Mr Morin:** The savings trust in the Macdonald Block.

**Mr Cooper:** Is it a full branch?

**Mr Morin:** Oh, yes, an excellent branch too. That is where I go.

**Mr Cooper:** So maybe we do not need the expanded services of the banking machine.

**Ms S. Murdock:** It sounds like we need a tour of the other buildings, since none of us knows where anything is.

**Mr Morin:** I will show you where it is.

**Clerk of the Committee:** A couple of letters to the committee dealt with constituency office services and provisions, and I discussed this with the finance director and his staff. As well, members said last week that each caucus should go back to discuss with their representatives on the board what the global allocations to be voted on at the next Board of Internal Economy meeting would be.

My understanding, from informal discussions with the director of finance, is the following: On the question of the phone system being modernized in the constituency offices to allow for the addition of extension phones, not to mention answering machines, fax machines or computer modems, I understand that is to be taken care of and provided for in the global allowance provisions for constituency offices.

**Mr H. O'Neil:** Could I ask what you mean when you say that?

**Clerk of the Committee:** It was a general conversation in view of the fact that the board meetings are in camera and I am not privy to the material that is before the board.

**Mr H. O'Neil:** I think Sharon raised the question last week that when some of these services are put in, it is so expensive it really cuts into our global allowance. So again, if that is what they mean, I would have some concern with it, as I think, Sharon, you mentioned something last week, too.

**Ms S. Murdock:** Yes, I did mention there were some costs. Now, whether the Board of Internal Economy ends up supporting that or agreeing to it, I do not know if that is going to happen. Frankly, with the way things have been going, they have been cutting back significantly in a lot of the requests from different areas, and legitimately so, I guess, in this time of recession. So I do not know whether



we will get it all, because I know that has been discussed. I have talked with the finance branch numerous times about the telephone systems, that that is considered an entitlement, so I do not imagine that they would be attaching it back under our \$10,400 allotment for the year.

The fax machines also: When I was speaking to Bev Biggley, she was saying that was also being considered. I think we will luck out if we get our computers, but then again, too, in this time—maybe we can look at that next year if the recession is over, and we should be considering that anyway.

**Clerk of the Committee:** On the second issue raised in one letter, the provision of a more modern answering machine with the phone-in programmable design, I was told it was allowable now to purchase such, that it would come out of the member's communications budget, and the question raised was: Is the issue that there are not enough dollars there now to provide for that? But it is possible to have such.

**Mr H. O'Neil:** And the answering machines are not too expensive. For a fairly good one, they run around \$100.

1600

**Mrs MacKinnon:** Are we expected to purchase those particular machines through the Ministry of Government Services or in the stores in our riding?

**Mr Cooper:** Either way.

**Mrs MacKinnon:** My next question is: Do I go ahead and purchase them and bring my receipts?

**The Chair:** Yes, you would submit your receipt to the financial branch for a reimbursement or you could use the government stationery catalogue. I think there are a number of answering machines in that.

**Mrs MacKinnon:** Great. I know what I will do on Saturday.

**Clerk of the Committee:** On the third point raised, about computer workstations provided in constituency offices, again the general answer I was given was: That also is taken care of in the material before the board.

**Mrs MacKinnon:** What do you mean it has already been taken of? I do not understand.

**Clerk of the Committee:** Is to be included in—

**Mrs MacKinnon:** But it is not okayed yet?

**Mr Owens:** It is on the agenda.

**The Chair:** I understand it is on the agenda before the Board of Internal Economy on Monday, so we have to wait for the decision from that meeting.

**Clerk of the Committee:** And on the matter of a photocopier machine that would make possible two-sided copying, I was told that it is not provided for as a separate item in estimates, that such machines are provided for or arranged through supply and services, and that it is probably just a matter of speaking to the head of supply and services to arrange for getting a different model of machine.

**Mr H. O'Neil:** It is my understanding it would have to come out of your constituency office allotment of \$10,400. but for your own information, Ellen, supply and

services will go out and negotiate a contract with you for the photostat into your constituency office.

I think the one I have in the Trenton office is some \$50 a month, and it is a very good photostat machine. I have two constituency offices in the other constituency office, it is my own machine I bought. But depending upon how much money you have, you know, to work with at \$50, \$60 to \$70, you can usually rent one. I have always thought the best way to handle it was to rent it. Then they look after everything for you. Just for your own information.

**Clerk of the Committee:** And that completes my responses to date on the status of the members' services and facilities inquiries. I will have further responses at future meetings.

**The Chair:** A point of clarification here: You will be responding, in letter form, to those members who have written to the committee in relation to the information you found out?

**Clerk of the Committee:** Yes.

**The Chair:** Thank you. Is there any other issue regarding members' services and facilities that members wish to raise at this time?

**Mr Villeneuve:** I believe the birth certificate situation was settled, but possibly you could touch on it just to confirm what has happened. We saw the first item of correspondence from you to the registrar general people. We have not seen further correspondence, other than what we spoke of.

**The Chair:** I understand a letter should have gone to each member. In fact, a letter came from the minister, I think the very next day, in relation to that particular problem, and she indicated at that time that she was going to copy that letter to each member.

**Mr Villeneuve:** I do not recall seeing it. I do not know.

**Mr Morin:** Signed by the minister?

**The Chair:** Signed by the minister.

**Mr Villeneuve:** It came?

**The Chair:** Yes. She has agreed to continue with the service and actually, I think, upgrade the service as well for the public, and expand the hours.

**Mr Morin:** My assistant went through the exercise from Ottawa, and we have encountered problems again. So I do not know if you could have a latest report on how the system is now working. I am told that when they called Toronto, they were referred to—it is Thunder Bay, is it not, where they moved? And then of course it complicated matters again, so I hope that does not happen again. Apparently, my assistant was told by the person responsible for the new services for the MPPs. So I hope it is settled, I hope it is fixed now.

**The Chair:** I will take that point up to the minister and get back to you. Any further issues arising out of members' services and facilities?

**Mr O'Neil:** I wonder if I could ask the clerk if it mentions any of the other things that are going to be discussed at the Monday night meeting besides the computer



terminals. There were some other things under discussion, too, I understand.

**Clerk of the Committee:** I asked what would be on the agenda and I was told the estimates were still being carried over from the previous meeting.

**Ms S. Murdock:** I know that each of the caucuses was presented with whatever. I do not know who did it. I know part of our caucus administration was involved and that at last week's meeting we were supposed to go back and check to see what had been presented to us and what we had agreed with and disagreed with and so on. So I do not know what exactly is before the Board of Internal Economy, based on that. I guess it is the House leaders—I do not know; who does that?—or the caucus administrators for each caucus.

**Mr O'Neil:** House leaders.

**Ms S. Murdock:** Would it be the House leaders? Well, anyway, they would have finally ended up on an agreed package to bring before the Board of Internal Economy. I know what ours was before the three parties got together to discuss it, but I do not know what it is now. Whatever it is now is what is going to be decided on on Monday night, though, so I guess what we have to do is talk to our House leader and find out what the final bottom line was.

Does that answer your question?

**Mr O'Neil:** Well, when we were talking about the computer workstation, you had maybe mentioned that you did not know whether for sure that would be okayed.

**Ms S. Murdock:** Initially, on the one that was presented to us—and we said this last week—the proposal was that we were going to get a computer terminal at each permanent employee's desk. Now, in my constituency office, for instance, that would be three, and that is pretty pricey. Also, not all constituency offices would have three people. Some might only have one and others might have two, so it would be unfairly distributed among the members. That is number one.

Number two is the cost at this time. The ones we have, I think, are about \$5,000 apiece. You take 130 members and it is a lot of money at this time. So I do not know. I am sure that was discussed, because it certainly was discussed by our people and I can imagine that it was discussed by yours, and I imagine it ended up not being as high as what we had originally asked for.

**Mr O'Neil:** The presentation we had said that at first a workstation will be added for constituency offices, which included computer furniture, modems, training software and a laser printer, so it would be one per constituency.

**Ms S. Murdock:** You need one in this day and age, there is no question, but it would probably be very greedy in a recessionary period to be asking for more.

**Mr O'Neil:** My personal feeling is that if we were to get one we would be very happy with that and it would really help us out.

**Ms S. Murdock:** It is true.

**The Chair:** I understand that Margaret Marland wanted to present a motion in relation to having at least one computer terminal in each constituency office.

**Ms S. Murdock:** But it is not up to us, Mr Chair. We can vote and make all kinds of motions if we want, but the reality is that what the Board of Internal Economy says on Monday is what we end up getting.

**The Chair:** This committee can recommend and advise.

**Ms S. Murdock:** Yes, we can recommend. That is true.

**Mr O'Neil:** It was also my understanding that a second workstation would be added to our Queen's Park offices. We each have one now. It is my understanding that there would be a second one added to Queen's Park, but only one per constituency.

**The Chair:** Any further discussion? Any other items members wish to raise in the members' services and facilities?

**Mrs MacKinnon:** I do not even know if this falls under our jurisdiction or not, but I will soon learn. The little tuck shop beside the legislative dining room—is there any way we can get that open again? It is so handy to get a card.

**Mr Morin:** Do you know the story of what happened exactly?

**Mrs MacKinnon:** I heard that somebody had a very severe heart attack.

**Mr Morin:** No, the company that had the responsibility of running the shop decided it did not want it any more. They just closed the shop and they did not tell the Speaker. That was it.

I believe the Speaker has this under control now and—did you say it was open today?

**Mr Villeneuve:** I saw them putting stuff in there yesterday.

**Mr Morin:** It is under new management now. The blind person who was responsible—I think he had a seeing eye dog also—has his job back, too. That is my understanding.

**Mrs MacKinnon:** Oh, that is good. I have missed it.

**Mr Morin:** I heard this. I think it was on radio.

**Mr Frankford:** There was a radio interview with the Speaker about this.

**The Chair:** Any other items members wish to bring before the committee? We have an item that we wish to go in camera to discuss.

The committee continued in camera at 1611.

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M-11 1991

M-11 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 17 April 1991

## Standing committee on the Legislative Assembly

Review of  
Freedom of Information and  
Protection of Privacy Act, 1987

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mercredi 17 avril 1991

## Comité permanent de l'Assemblée législative

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée

Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
Greffier : Douglas Arnott

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 17 April 1991

The committee met at 1534 in room 151.

### REVIEW OF FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of the Freedom of Information and Protection of Privacy Act, 1987.

**The Chair:** I would like to call the standing committee on the Legislative Assembly to order and welcome everybody here today. We are beginning to continue with our review of the Freedom of Information and Protection of Privacy Act and we have some witnesses here today from the Ontario Public Service Employees Union. At this time I would ask them to come forward and make the presentation.

### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**Mr Onyschuk:** Thank you, Mr Chairman. My name is Jim Onyschuk. I am an education research officer with the union. There may be another person joining us. He is probably stuck in traffic with the rain that is falling. He is coming from North Bay, but I asked that he attend to provide some firsthand examples.

You will notice from the title of our brief, we call it A Delicate Balance, and as we go through the brief you will see why we do title it A Delicate Balance, because there are certain areas in which we feel that the heads who have to interpret this act sometimes are going the wrong way.

We of the unions have perhaps had more experience in applying this act with the government because we are continually dealing with the government. I will just read the brief into the record.

The Ontario Public Service Employees Union welcomes this opportunity to present to the committee some of our experiences with the Freedom of Information and Protection of Privacy Act. Our union represents more than 105,000 public sector workers, and when the legislation first came into effect we were concerned that information that was previously accessible would be closed off. Just as an aside, it was quite common for us to receive information in a rather informal way. We have found that information that had been informally obtained before the act was passed was now being denied us, forcing us to use the freedom of information request procedures.

On the positive side, we saw this act as opening up information helpful for collective bargaining, organizing drives, whistle-blowing on government mismanagement, critical comment of government programs or policies, and grievances. We also saw how the act may enhance the privacy rights of our individual members.

Over the past three years we have used the act to obtain information, primarily to gather information on government contracting-out situations. The underlying premise of this act is that the government should have nothing to hide except when policy is being formulated or matters of security are involved. We agree with the general principles stated

under section 1, which lays out the purpose of the act. However, our experience with this legislation has been that too much is left at the discretion of the department head. As a result, some information has been shielded when it should be open.

Under the heading "Shielding Information," we cite that subsection 10(1) of the act provides that "Every person has a right of access to a record or a part of a record in the custody or under control of an institution unless the record or the part of the record falls within one of the exemptions under sections 12 to 22." So while section 10 opens the door to information, sections 12 to 22, which cover exemptions, have the effect of shielding information.

Subsection 13(1) says that a "head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant, any other person employed in the service of an institution or a consultant retained by an institution." Subsection 13(2) lists the exceptions to the exemption rights of a head. These exceptions are mandatory and "a head shall not refuse under subsection (1) to disclose a record" covered by subsection (2). It is subsection 13(2) that allows our union access to information useful for collective bargaining and other purposes.

Subsection 18(1), however, provides that a head may refuse to disclose a record that contains information described in clauses (a) through to (g). A great deal of confusion has arisen when interpreting subsection 18(1) alongside subsection 13(2). Our interpretation is that subsection 13(2) relates to final plans and policies, whereas subsection 18(1) refers to plans and policies that have not been finalized. While at first glance subsection 18(1) may appear to be reasonable, in most situations we would ask that this government give it a second look, especially where new technology is being introduced.

### 1540

Under the heading "Technological Change," we are anticipating some new direction on the part of this government and we foresee a problem that may arise with the introduction of any legislation regarding technological change. Should the government enact comprehensive legislation on new technology, which we hope it does, fundamental to such legislation will be the need to disclose information on the kind of new technology and how it will be applied. In this situation we would foresee that subsection 18(1) can become a problem. Subsection 18(1) essentially allows the government to refuse to disclose information when in its formative stages. In situations where new technology is being formulated, it is precisely at this time that a union should be involved, not after a policy has been adopted and implemented. Should this government consider legislation such as a technology bill of rights, much of subsection 18(1) could in fact contradict



an advance notice provision or interfere with negotiations on the type and design of hardware, processes, etc.

Technology, for those of you who are familiar with the process, not only involves just the hardware; it also involves a process of work. We feel that there has to be some sort of involvement of the union in the very initial planning stages before any policy is implemented.

We would ask this committee to consider an amendment that would create an exception to subsection 18(1) that will enable us to garner information to enable the union to bargain new technology in the workplace.

Another problem that we have experienced is with regard to third party information.

**Mr H. O'Neil:** Was that to bar any new technology? Was that your comment?

**Mr Onyschuk:** Not to bar new technology, no, by no means, but that we would be involved in the initial stages of the actual planning and negotiating the type of new technology, the processes, even to the extent of perhaps even designing it. In other countries, for example Sweden, the unions got involved in the design process of the hardware and when you see a computer with a detachable pad, like the keyboard, that is as a result of an actual union design that was implemented in the very formative stages and they got the engineers to then redesign the hardware so that people were not sitting with this piece of hardware that was doing damage to them.

**The Chair:** I am going to interrupt for a minute. Margaret, did you have a question?

**Mrs Marland:** I am happy to wait until the end.

**Mr H. O'Neil:** Sorry, I should have waited.

**The Chair:** I was wondering if the committee members could hold back until the end of the presentation. There will be ample opportunity for everyone to ask all the questions they need. You may proceed.

**Mr Onyschuk:** Under third party information, clause 17(1)(d) is supposed to protect sensitive labour negotiations information supplied to a mediator. It provides that a head "shall refuse to disclose a record that reveals...labour relations information...where the disclosure could reasonably be expected to...reveal information supplied to or the report of a conciliation officer, mediator, labour relations officer or other person appointed to resolve a labour relations dispute."

To us that language is very clear. It is a government-appointed individual who is involved to help resolve a labour relations dispute. So this section is clear; it is not a vague section and it is a reasonable provision. However, any head who reads page 4-15 of the manual on the Freedom of Information and Protection of Privacy Act supplied by this government can become thoroughly confused over the meaning of "third party information."

Under the heading "Categories of Third Party Information," the manual reads, "Labour relations information: The term refers to information concerning the relationship between employers and their employees, both union and non-union, particularly information relating to collective bargaining." That is quite a broad sweep and it covers the whole ambit of collective bargaining: Whereas the legislation

is very specific, the advice that is being given to the people who will be administering this act in the workplace is a very general kind of definition which in fact bars much information that is needed by the union in many cases.

The manual, which provides a broad sweeping interpretation, should be corrected to specify exactly what would constitute third party information in a labour relations dispute, and I can cite you a few examples.

For example, in grievance handling, in competition cases where two or more people are competing for a position and one person is successful and the other person grieves, the person who is successful is regarded as a third party. We have had the employer denying us information citing the Freedom of Information and Protection of Privacy Act and we have had to actually subpoena documents to correct the situation. So we go through this hassle when all it would take is a clarification of what the Freedom of Information and Protection of Privacy Act actually applies to with regard to the third party.

We have also had situations in the past where we have tried to get information from the employer during bargaining, such as incident reports in institutions, where they refused to grant us incident reports. These would be incidents, let's say, in a correctional facility or a facility that deals with mentally ill persons where an incident occurred where maybe somebody bit somebody or fought and this would just be a list. So we wanted to find out exactly how many incidents were occurring for purposes of negotiating health and safety. We found that employer was stymying us in this regard. So those are just a couple of examples where people cite the freedom of information act when the freedom of information act should not be applied.

Another criticism that we have, and I am sure you have probably heard this before, is the prohibitive fee for service that is present. Individuals who request information under the act may find that information is worth a lot of money to the provincial government. In fact, high fee-for-service costs may actually act as a deterrent to those seeking information. In the exhibits, we have some correspondence under appendix 2 from one of our members, Mr Misir, a member of our union, who questioned Sidney Linden, the Information and Privacy Commissioner, on an estimate of \$9,503 for processing a request.

Mr Misir writes: "The estimated cost of \$9,503.80 for processing my request is too exorbitant and is equivalent to 20 weeks' wages for a full-time file clerk. I do not think their estimate is reasonable since most of the information sought is stored on microfilm, microfiche or computer disk and can be easily retrieved."

We joined Mr Misir in questioning the high rate. For example, 20 cents per page for photocopies seems to be exorbitant. Then they provide a search after two hours and "record preparations including severances" costs \$6 for each 15-minute period, amounting to \$24 an hour. At that rate the staff would have to be paid \$870 per week. If the government maintains that staff doing this retrieval work are worth \$870 per week, we would agree; however, the government is not paying its staff this amount. The government appears to be gouging those who are seeking information that is legally theirs.



We recommend that fee for service be based on the actual costs and not these higher and prohibitive rates.

Fortunately for Mr Misir, the costs were borne by our union. Otherwise the information he sought, which was being used to protect workers' jobs, may not have been affordable.

Under the heading "The Slow Runaround," we have had a common complaint about the slow process found under this act. We cite one example, and under appendix 3 you will find a request that we filed on 15 June 1989. A little over one month later, on 19 July, we received a response from the acting deputy minister of the Human Resources Secretariat, Mr R. M. Monzon, and it was dated 10 July. The postmark indicated that this letter had been mailed out 17 July, and you will find that in appendix 4.

OPSEU was refused the information based on subsections 12(1) and clauses 18(1)(f) and 18(1)(g). No rationale was provided as to why each detailed request was denied. The deputy minister, in a cavalier fashion, simply cited the gist of the sections. It would seem that the practice was to wait the full 30 days, and in this case a little bit more than 30 days, and then toss off a minimal response with no detailed rationale, even though there was plenty of time for a rationale to have been provided. We questioned whether this was step 1 of the runaround process.

1550

The onus then fell on OPSEU to justify its request. Section 53 reads, however, "Where a head refuses access to a record or a part of a record, the burden of proof that the record or the part falls within one of the specified exemptions in this act lies upon the head." So the act is very clear on where the burden rests, that they should be providing a rationale as to why rather than to simply cite sections. We question whether the acting deputy minister had indeed met the "burden of proof" test. What would constitute a proper response under these circumstances? Simply citing those sections of the act that were being used to deny us access was not enough. What was needed was a point-by-point rationale for his decision.

On 18 August 1989 OPSEU appealed the denial of information; see appendix 5. We offered a detailed response indicating, point by point, why subsections 12(1) and 18(1) did not apply. We maintained that the material requested was factual as is allowed under subsection 13(2) and that the information pertained to current and future plans based on current policy. We were not requesting information where the disclosure could reasonably be expected to result in "premature disclosure of a pending policy decision," which is found under clause 18(1)(g). The purpose of our request was to obtain information that would allow us to better protect our members whose jobs were being contracted out.

It would appear that the previous government seemed more interested in hiding behind the act to deny us information. Based on this experience, we would recommend that this government establish clear guidelines for what is required to meet the test of "burden of proof." The "burden of proof" rationale should start before a head issues a denial, not after an appeal is filed. I think that is an extremely important principle to incorporate in any regulations that

you may change, that when a head is refusing, rather than just simply citing the act, he should cite the section of the act and why he has chosen that section of the act.

On 24 November 1989 OPSEU received a report from the appeals officer indicating that the commissioner was conducting an inquiry into our appeal. Finally, on 11 January 1990, we were informed that section 12 had been dropped as an impediment but subsection 18(1) still applied. So they found that the application of section 12 was incorrect but subsection 18(1) still applied, in their determination. However, the appeals officer added clauses 18(1)(c) and (d) to the exemptions and indicated we could then appeal these decisions. So of course we chose not to, because it would have further delayed it.

This example, spanning seven months, illustrates the inordinate length it can take to receive information under the act. We ask that this committee look into ways of speeding the process. We have experienced delays of up to two years when requesting information about contracts that were awarded in a crown transfer situation from the Ministry of Natural Resources. Even though a court had ruled that a crown transfer had indeed transpired, OPSEU was stymied when attempting to obtain information about the nature of the contracts. By the time we received this information it was not helpful to us; it was too late. We are not saying that in every instance there are inordinate delays; we are saying that the act does not provide for speedy retrieval of information. In fact, in many cases we have had a very quick response from some of the ministries.

Under the heading "Balancing Privacy and Safety," an important issue that we are very concerned about, we are also concerned about how interpretation of the act could have serious affects on the job safety of our members. In the fall of 1990 an inmate of the Wellington Detention Centre applied under the act to see his personal file. The superintendent of the institution was ordered to disclose the information. The inmate had a history of unprovoked violent behaviour towards correctional staff. His file contained the names of correctional officers who had recommended disciplinary procedures against the inmate. The superintendent informed the staff named in the file that the information in the file was to be released to the inmate. The staff objected to the release of the information on the grounds that disclosure may provoke the inmate to violent behaviour towards those named in the file.

The superintendent felt bound to release the information as required by the order under the act. Fortunately, OPSEU was asked to intervene on the issue of health and safety of staff. After some discussion the superintendent was persuaded to remove the names of the correctional officers from the file. Had the union not been asked to intervene, this disclosure could have had disastrous consequences. And unbeknownst to this superintendent, the act does provide measures to protect the privacy of officer members, under clauses 14(1)e and 14(2)d, section 20 and clause 49(e). However, heads who are called upon to apply the act may not be aware of these protections.

While the act does provide some protection, those responsible for interpreting it are not properly trained to interpret it, so there is a major falldown. It is a very



complicated piece of legislation and people are not being trained as to how to apply it, especially when it comes to health and safety situations.

Under the heading "Violent Inmates and Patients," related problems occur when violent or psychopathic inmates or psychiatric patients are placed in general settings and staff are not informed of their violent proclivities. By not forewarning a correctional officer or a psychiatric nurse that an inmate or patient is potentially dangerous, a serious safety risk is presented.

When clients, patients or inmates are known to be dangerous, proper training should be provided to all staff on the "public interest override" known as section 23 of the act. This section gives the head the discretion to disclose information and override an exemption where the public interest outweighs the purpose of the exemption. Health and safety of staff is public interest that should apply to dealing with dangerous offenders and patients. Our members should know whom they are dealing with and not have to find out from a hospital bed.

Finally, under "Listing of Documents," it is our submission that it is in the public interest to know what issues the government is working on. Each ministry should disclose a list of all studies and policy documents that are accessible under the act. Likewise, each ministry should indicate the titles of those documents that are deemed confidential and not yet accessible. This would save a lot of time and expense in situations when someone requests a document that has been exempted under the act. Quite often we will file under the act, only to find out that there is legitimate reason why certain sections cannot be released.

Just one additional point along the same line: Quite often we will receive a document to find a lot of blacked-out spaces, with maybe the odd reference to a section of the act but no rationale provided. We really do not know whether or not the wool has been pulled over our eyes. We would like to see a situation where, if there are sections being blacked out, there is an explanation in the margins as to why those sections are being blacked out and not just simply citing subsections 18(1) or 14(2) or something that.

We thank the committee for consideration of this submission, all of which is respectfully submitted.

**The Chair:** Thank you for your presentation. We now have questions and we will begin with Mr O'Neil.

**Mr H. O'Neil:** Let Margaret have it.

**Mrs Marland:** Thank you Mr Onyschuk, in your introduction on page 1 you make a very strong statement in the second paragraph where you suggest that you would be "concerned that information that was previously accessible would be closed off. We have found that information that had been informally obtained before the act was passed was now being denied us, forcing us to use the FOI request procedures."

I think that is a very significant statement in your presentation today and I was wondering if you could give an example of what you mean by information that had been informally obtained before, because I am wondering how significant that information was that it now had to be under the act.

1600

**Mr Onyschuk:** Most of this information was pertaining to collective bargaining situations, such as memos that would be brown-paper-enveloped to us of maybe a minister requesting that there is a need for an expansion of staff, matters such as that. It was very common, in fact, for us to receive this kind of information. Assistant deputy ministers would be corresponding with somebody else or a department head would be just corresponding, saying, you know, "We're being hard pressed; we're just understaffed." Primarily in those kinds of situations now we find that this kind of information is no longer forthcoming. Technically, I do not think that would apply under freedom of information, but we would not know of this information.

**Mr H. O'Neil:** That is a pretty strong statement there too, "It's not happening now."

**Mrs Marland:** Excuse me, Mr O'Neil.

**Mr H. O'Neil:** Sorry about that, Margaret.

**Mr Owens:** Ask the employees now, for a change of pace.

**Mrs Marland:** I find the—

**The Chair:** Excuse me, Margaret, just for one minute. If the members of the committee could direct remarks to the Chair, please.

**Mr Owens:** Excuse me, Mr Chair. We should ask the employees, for a change of pace.

**The Chair:** Everyone will get an opportunity to put questions. Margaret.

**Mrs Marland:** He will give you your turn, Steve.

Obviously in this building we are all privileged to the brown paper envelope route. I have even received chocolate bars in plain brown wrappers from former cabinet ministers, which I enjoyed thoroughly.

I thought perhaps you would give another type of example, because the plain brown wrapper route is going to continue regardless, because that is part of a system that exists and I am sure it would exist in your offices as it exists in ours that we get stuff under the door from sources unknown.

I am just wondering if that really is the route that has been cut off now because, I mean, that was an informal, unofficial source for you before. I find it hard to imagine that kind of source would now be limited to formal freedom of information requests. So is that really a example of what you mean in this second paragraph?

**Mr Onyschuk:** There is another example, of a high-level official with the Ministry of Correctional Services who did some whistle-blowing. He was upset, again, about the shortage of staff and the dangerous situation some of our staff were being placed under. Consequently the employer got hold of the name and this person was released. Of course, one of the purposes of the act that we see is that it should allow for whistle-blowing when it comes to especially revealing hazardous situations.

**Mrs Marland:** Absolutely.

**Mr Onyschuk:** It is a tragic situation.

**Mrs Marland:** Who was released?



**Mr Onyschuk:** The senior person was released.

**Mrs Marland:** Really? I suppose that has been grieved and is in process?

**Mr Onyschuk:** At that level, I do not know if a grievance was processed under the Public Service Act. That would be the only recourse. I am really not familiar with what transpired afterwards.

**Mrs Marland:** I happen to believe that wherever anybody works, if there are situations of concern—whether it is a physical risk or some other kind of risk to an employee—I feel that those kinds of concerns should be permitted to be brought to the attention of the administration without any risk to the employee.

Certainly, having travelled the province on two bills dealing with workers' compensation and occupational health and safety, I am well aware of some of the examples. You just mentioned an example with the Ministry of Correctional Services where understaffing really did put the balance of staff at risk.

I would hope that we would not get into a system in our Ontario government bureaucracy where in order to get that kind of information out where that kind of situation exists we do not have to go through a process of filing for that information through the freedom of information act. If that is what you are saying in your second paragraph, then I do have a great deal of concern with how the system works. That is why I was wondering, when I asked for an example, because we, as a government, cannot have our employees or other workers in any workplace in this province at risk because it takes six months or 12 months to get the concrete information extracted in order to make a legitimate claim of risk for those workers.

**Mr Onyschuk:** I think much of the criticism we have of the act is not necessarily in the area of wording per se but in the actual application. In the examples we cited, for example, health and safety, there are sufficient provisions within the act for health and safety coverage. In fact, the Occupational Health and Safety Act overrides all acts, so there is provision there. However, some of the heads are not informed, and I think that is where the danger lies. It is incumbent upon the government as an employer to apprise the heads who will be utilizing this act to indicate that in certain instances there are health and safety issues and here is where they are covered under the act, so when it comes to gathering information this information will not be denied the union, nor should the union have to go through a prolonged process of appealing and so on.

But the other key things I pointed out are the inordinately slow process it takes to gather legitimate information that is necessary; also, there is some confusion between the wording in the act and the interpretation provided in the manual. The example I cite under the first exhibit shows there is a contradiction in interpretation. If you look at the act there is a plain meaning of the act; it is very clear what "third party" means. However, the interpretation found in the manual that is sent to the heads is very confusing, so consequently it leads to a lot of bona fide information relating to collective bargaining or to

grievance handling being denied us, and we have to go through a hassle to try and retrieve this information.

**Mrs Marland:** You state very clearly that too much discretion is left to the department head. I think there has to be some kind of wording we can make in our recommendations for any changes to the act where the discretion of a department head does not put at risk either his or her job on the one hand or the employees' on the other, in any workplace, not just a government workplace.

I have another question on page 2 that I found very interesting, in your second paragraph, where you say, "A head may refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant." I did not know, because I do not think any of us know the act—all whatever number of pages there are in this act; I suppose a couple of hundred—I do not think we know the act well enough to know every section and the wording. But is it not colossal to think that the advice or recommendation of a public servant is not accountable? Why should a head refuse to disclose a record where the disclosure would reveal advice or recommendations of a public servant? If a public servant is giving advice or making recommendations, surely he should not be doing that if he cannot be accountable, so what is the concern about revealing it?

**Mr Onyschuk:** We have no concern in this case. What we are doing is just citing the delicate balance between subsections 13(1) and 18(1), that there is an area where policy is being formulated. We interpret that subsection 13(1) is looking at where you are asking for advice; you may ask for advice from 20 different sources, but once the final policy is determined there should be the basis of accessing information; and after the policy has been brought into play it is the exemptions. So we are just showing the delicate balance. On the one hand you have an area, and it is logical why these areas are cut off from view at this stage, but after policy has been implemented then this information should be accessible to view.

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**Mrs Marland:** But as a representative of public servants, which you are through this union, do you not agree that this section in the act in itself is a little ludicrous? For example, maybe he or she is in a job where giving advice is all he does, that is what he is paid to do as a government employee, or is giving recommendations. Surely they should not be shielded from that; if they are paid to do that, surely they have to be accountable for what they do. Why should they be shielded? Why should that be there?

**Mr Onyschuk:** I think you are asking the wrong person. My interpretation, and I may stand corrected, is that I presume this is to deal with situations in the formative stages, and there is a certain logic to it, because let's say somebody prepares a document and it is way out in left field; policy is going in one direction and you are garnering information from many different sources. Until the policy is determined, there is a certain logic to shielding that particular information. I presume that is the purpose.

**Mrs Marland:** Project X of the former Liberal government would be a good example, I suppose.



**Mr H. O'Neil:** Which one was that?

**Mrs Marland:** That was the one where the bureaucracy was blamed for suggesting major changes that would affect the Environmental Assessment Act and the Environmental Protection Act and future development in the province. It was labelled project X and was palmed off as a civil servant document, not a government document.

I will not monopolize the time any more. But I want to tell you, Mr Onyschuk, that I certainly agree totally with your comments about the fee for service. I feel the fee for service should cover the cost, the real cost, of providing this information to the public, and your union and your members are the public the same as anyone else. I do not think the system should be prohibitive through its cost. If it is truly access to information, it has to be accessible to everyone. I am sure that is going to be an area we will be spending some time on when we discuss possible amendments to the act.

I can also understand what you are saying about the pivotal department head in every instance being an area we have to look very closely at. It seems to me there is an awful lot of latitude in that interpretation as to what their powers of discretion are. I appreciate those points you have brought to us today.

**Mr H. O'Neil:** I also appreciate receiving the brief and some of the comments, although not all of them. Margaret raised that concern about that second paragraph. Are there any examples of ministries or agencies that are not supplying quick answers, or refusing when they should not be refusing?

Although you have touched on one example you feel, I do not feel you have given us enough examples to really substantiate what you have said in the brief. In other words, you are comparing before with now; again as Margaret mentioned, your statement, "We have found that information that had been informally obtained before the act was passed was now being denied us, forcing us to use the FOI request procedures."

In the hearings we have had some people who have come before us who have experienced some of this through the different ministries. I would like to know what those examples are, what the ministries are and some more details. If you cannot give them to us today, maybe you could supply it for the committee in some type of written addendum to this. In a lot of the cases, we find there are some reasons it was not given. Are there any other examples you could give?

**Mr Onyschuk:** I think this would be an excellent example of how we could use the freedom of information act to gather that information of all the times OPSEU has applied using the freedom of information act and the time it has taken from start to finish for that information to be forthcoming and how many denials have occurred. It would take a fair amount of effort on our part to go through, individual by individual, because it is not only our staff involved in accessing information, it is also members out in the field. This may be an example, if you want to test it, to see just how quickly you can retrieve information under the freedom of information act. I am sure there is a

central area where all the files have been logged, so this information should be accessible.

**Mr H. O'Neil:** Mr Chairman, that is maybe something we should check into, but, again, it is like you drawing the line and saying, "Before FOI we had no problems or not very many problems; now we have more since FOI came in." I find that hard to really comprehend.

**Mr Onyschuk:** I think what happened after the FOI came in was that everybody was put on guard, that there was a process and you better watch yourself because there is now this legislation that covers it. I think as a consequence people erred on the side of protecting their backside, whereas before it was a little more informal.

In fact, it was a sort of amusing situation I faced. When I first came on staff with the union, it was known as the Civil Service Association of Ontario. I came on staff as a research officer and I used to receive information that should have been going to the Civil Service Commission from various employers who were being surveyed on jobs, so I was getting all this confidential information because the employer thought the Civil Service Association was the same as the Civil Service Commission. I would note down the information and forward it to the Civil Service Commission, so we were being apprised of a lot of information, mainly through the title our organization then had. Once we changed to the Ontario Public Service Employees Union, that information quickly dried up as those errors were no longer being made. But I think once this act came into place, the informal approach became formal.

**Mr H. O'Neil:** People were on guard for fear they would release something they should not.

**Mr Onyschuk:** That is right.

**Mr H. O'Neil:** One of the other things you raised was this particular case of a \$9,000 fee. Could you give us some more particulars on what that case was and what you were charged for?

**Mr Onyschuk:** You will find it in the exhibits. It is all there, and it is broken down in terms of the charges.

**Mr H. O'Neil:** We just received this, so we did not have a chance to look at the enclosures.

Also, you were mentioning several things, that it might be business, dealing with patents or certain changes in industrial work. You are saying that unions should be involved and help with the planning and things like that.

**Mr Onyschuk:** With new technology, the experience in Europe has shown that unions have been involved from the initial planning stages. When the employer decided it was going to be introducing new technology, it would then inform the union and involve the union in the actual informal discussion stages right through to the formal planning. This seems to have worked. As a result of this process, the union has always felt comfortable with that kind of process.

Right now there is no legislation covering new technology. In Canada, you may find it in a few jurisdictions. Federally there is a disclosure process in the federal legislation. The Public Service Staff Relations Act provides up to, I believe, six months' prior disclosure that they are going to be introducing new technology. What we would like to



see ideally is that as soon as the employer is anticipating bringing in any technological change and the process of technological change, this be disclosed to the union and they sit down and actually hammer out the policy with regard to that, because it affects the health and safety of workers as well as the general working conditions and so on.

That is why we feel it is important that we be involved at all stages, and hopefully with this new government it will bring down some major legislation in the area of new technology.

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**Mr H. O'Neil:** You keep referring to the new government as making all these changes and no more brown envelopes. You might be a little biased.

You were talking about Europe, where this has been used, and different cases like that. How do you see things working here if the unions were brought in on some of the planning on these new technologies and changes? What if the new technology results in quite a few job losses? How do you see the union approaching that and working with the company, if it is in competition, maybe, with other countries or other companies in retaining some of the jobs and possibly losing some of them? How is that handled in Europe?

**Mr Onyschuk:** That is exactly why the unions should be involved in the initial stages, because they can then plan the job in such a way that there is no job loss. If productivity increases then there is a valid reason for keeping a worker on. We have had a traditional slogan of a shorter work week over decades as productivity increases. You have heard slogans like 30 for 40 and 40 for 56 and so on, but these are long-standing demands of labour that the workers do benefit.

If you are bringing in new technology and you have already decided that you are bringing it in and after you have made up your mind you will now negotiate the impact on work, then there is something wrong there. It should be that if it is going to have any kind of impact on work, why not sit down with the union or with the workers and say: "Okay, to compete with so-and-so, we want to bring this in. What suggestions do you have? How are we going to protect workers? What about retraining? What about the whole aspect of job enrichment, job location?"

How can we redesign the job, never mind the technology but redesign the job, so that the technology and the job are working hand in hand and you have a humane kind of relationship, as opposed to adopting a Ford or the factory approach to jobs, where you have people doing the same mundane task, except now they are using a computer to assist them to do a mundane job? There are elements of job design that are quite exciting and could lead to some very innovative work. The management rights provisions under both the law, the Crown Employees Collective Bargaining Act, and under provisions of collective agreements deny workers any major say in terms of new technology. We negotiate the effects of new technology. We do not negotiate new technology.

**Mr H. O'Neil:** I do not disagree with most of what you have said. I think what you have said is that if people

can work together like that, it is to the advantage of both the companies and the employees.

Going back to the other point that Margaret raised on shielding or employees giving advice, I guess having been a minister for over five years in the previous government it is my own personal feeling that I do not think employees should be held responsible for the advice that they give, whether it is verbally or in writing. I think that advice is used to help formulate policy for a minister and for the government, and in the final end it is the minister, along with the deputy and the government itself, who makes the final decision. I feel you would sort of hold back advice coming from civil servants if you were to place them in such a position as that, so I guess I am for, if you want to call it, a type of shielding for employees of the Ontario government or any government. I think they should be able to give their opinions without being held to ransom.

I guess in closing, getting back to the brown envelopes, we are still getting them, and I do not think you should think just because the new government that is in there and you have close ties with it—you may have close ties with us in the future when you get a few problems, and we already have some of your employees sending those brown envelopes. I mention that just in passing.

**Mr Owens:** I think the difference would be, though, that at least our envelopes are recycled paper as opposed to the type that was used in the final stages of your government.

Further, I would like to invite Mr O'Neil to my office one day and we can go over the finer points of tech change and the importance of that type of language in collective agreements. As Mr Onyschuk quite accurately points out, it is actually a time- and money-saving device that is quite often not utilized by employers and it tends to strain the relationship.

As a person coming out of a unionized environment, I can tell you of a number of occasions where the employer introduced new technology without the benefit of consultation. It led to weeks and months of wrangling and expensive grievance arbitration procedures.

My question to Mr Onyschuk is around the health and safety concerns that you raised. As a person coming out of a health care institution, I can tell you I have lost count of the number of times the words "patient confidentiality" were used to prevent our workers from being informed as to how they could protect themselves from the various and sundry diseases that patients bring into hospitals.

My question is around the health and safety act and how that relates with the type of problems you are having around receiving information. The act does not require a duty on the employer, as you are probably well aware, that information and assistance be forwarded to the health and safety committee. Are you having difficulties around that in terms of finding out the kinds of information that would be useful to your membership in protecting the membership, and what steps have you taken to rectify that?

**Mr Onyschuk:** I think the most common complaint is in common settings, let's say in a mental health centre where you have a patient who is very violent and he will be put into the common area as a practice. The staff do not



know the background of that particular individual. It could lead to and has led to all sorts of what are referred to as "incidents."

Similarly, with the correctional facilities you have correctional officers who are put into situations where they do not know the background of an individual. They may be escorting an inmate, for example, and it is previously known that this is a person who tends to try and break out and would use violence to try to achieve his goal. Instead of having the proper number of correctional officers accompanying this person, they just may have one or two and consequently an escape occurs.

Of course, there is also the violence that quite often ensues with other situations where you have somebody who is transferred from a hospital setting into a correctional facility and it is not known that this person is psychotic and extremely violent. This information is not passed on. Now, we would ask that the override provision be applied here and that the heads in these cases would forewarn the staff that you have got a person here who has got a proclivity to or a record of violence. In a case that we cite about a person who has a hatred of correctional officers, and them having access to the information about who put what down on the record, that could have led to some sort of dangerous situation evolving. But we do have the situations. If you talk to any correctional officer in any facility, they can cite examples of that where they find out afterwards that so and so is a known violent individual.

1630

**Mr Owens:** In that case, what steps would be taken by management to ensure that that situation does not happen again, or is this an ongoing problem that is ignored by the corrections officials?

**Mr Onyschuk:** It tends to be ignored. This is what we are saying: that this information should be taught to all heads so that they know there is provision in the act for this information being provided, and it should be made very clear in every instance.

**Mr Owens:** In terms of the fees, the \$9,000 that you were charged for the search, what is the average amount of money that your group spends per year on FOI searches?

**Mr Onyschuk:** You have me there. We have not done a compilation. It is difficult for us to do. We could probably very readily find out from head office what transpired out

of head office. Then you have the regional offices and you would have to get a record of that, and then there would have to be what individual locals have been doing on their own. So it would be a major digging process on our part. We just do not have the facility at this point to be able to access that information.

**Mr Owens:** If we were going to look at changes to the fee structure, I am of the opinion that we should perhaps look at a one-time charge at the beginning of the process. You pay whatever number of dollars, whether it is five bucks, 10 bucks, or whatever the committee and subsequently the Legislature decides. Would you see that as being a reasonable suggestion, or what are your thoughts on that?

**Mr Onyschuk:** Given the fact that most information is put into a computer, it should be relatively easy to access, especially if there is a process where documents are logged in and ministries note down beforehand all the documents that are now public and those that are not public, and it would be easy in this manner. I would agree that probably you could have some sort of reasonable basic charge for the service so it would not be prohibitive.

I guess when they put this fee-for-service aspect in, it was to stop, I guess, fishing expeditions. People were going and asking for everything under the moon, and that would, of course, tie up a lot of staff and so on in exploration. But if you have the information known beforehand, "Here are the following documents and here's what they cover," then it would stop the fishing expeditions that could go on. I would agree that there just may be something worth while exploring in terms of trying to make it more accessible and reasonable for cost purposes.

**The Chair:** Thank you for coming here today and making your presentation. I am sure what you presented to us today will be helpful in our deliberations in making recommendations and changing this act.

The other witness who was scheduled for the hearing today has decided not to appear before the committee but instead to submit a written brief.

Are there any other items that the members wish to bring before the committee today? Hearing none, we have an item that we wish to review in camera. At this point could I have a motion to move to in camera? So moved.

The committee continued in camera at 1636.

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M-12 1991

M-12 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 24 April 1991

## Standing committee on the Legislative Assembly

Party affiliations and activities

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mercredi 24 avril 1991

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Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 24 April 1991

The committee met at 1540 in room 228.

### PARTY AFFILIATIONS AND ACTIVITIES

Consideration of Speaker's referral dated 10 April 1991 re: guidelines governing members' party affiliations on Queen's Park reports and related committee review of the extent to which partisan activities may be recognized as an essential and inherent part of the normal functions of elected members.

**The Chair:** We have a substitution, Mr Ward for Mr Jamison. The matter for consideration by the committee this afternoon is the Speaker's referral dated 10 April 1991 concerning the guidelines regarding members' party affiliations on Queen's Park reports and related committee review.

We have a number of witnesses here this afternoon. Mr Elston, on behalf of the official opposition, you may proceed if you wish.

**Mr Elston:** Actually, I understood I was not appearing on behalf of the official opposition so much as requested by the Speaker to give material or at least my commentary on the point of order I raised with the Speaker, which concerned the initials "NDP" appearing on Anthony Perruzza's mailout. I also raised the issue with respect to the Honourable Zanana Akande's mailout, whereon appeared a green New Democrat insignia.

When I got his note that he was referring the matter to the standing committee on the Legislative Assembly, I had assumed that I was here to raise it with you and in fact give the confirmation that the policy is really quite clear at the moment: there is to be no partisan insignia appearing any place on mailouts by members. That is, as I understand it, very clearly the position of our guidelines. Those guidelines are to be not only interpreted but enforced by the caucuses, and if there is a disagreement, then it is to come to this committee.

In fact, on the material which was forwarded to me by Mr Arnott, there was that section appearing on the front of the material which basically said—and it had been moved about 1986, I think, and the clerk can clarify if the date is wrong—that there should not be any partisan material but that the matter should be enforced by the caucuses, or if a disagreement ensued, it should come here. I presumed that was most specifically why I was here.

I will deal with the other issues if you wish, more particularly on a personal basis than on a caucus basis, because we did not raise this issue in caucus yesterday, obviously, because of my misreading of the invitation. I expected that the Speaker's letter took precedence when he said, "I am sending it to the Legislative Assembly committee, and by the way, you are to go there on—" I guess, Douglas, you had advised me of the meeting date, 3:30 today.

Anyway, I think it is clear that there is to be no partisan designation on material sent out under the franking system and I think under the two situations that I identified in the House it is quite clear that those materials ought to be reimbursed to the Legislative Assembly by the members in question. That is the first part of my submission to you and I think the Legislative Assembly committee should so find and direct that to occur.

With respect to the others, I think it is fair enough to say that I believe there should be continued non-partisan mailouts from the members, paid for by the Legislative Assembly. If the members decide that they wish to have something that is designated for partisan purposes, with visible signs, insignia, letters, names or whatever, then that should be quite clearly paid for by either the member or the party constituency association. I do not think there is any merit whatsoever in us as members shipping material out at the taxpayers' expense which is clearly designed to promote the Liberal Party, the New Democratic Party or the Progressive Conservative Party, nor do I believe it would be advisable that our one independent member send his material out designating himself as an independent. We are here in this House, all members, with not only the privileges of the members equally available—except those people who receive designations to the executive council and parliamentary assistant status—but we are all equally obligated to serve the people who come in our door.

I noted some of the debate—although I suspect well-delivered, it did not read particularly smoothly—did come to the point where it is sometimes the impression of constituents even now that if you are not a New Democrat, then you should not go to the New Democratic member if you are not a Liberal, you should not attend the Liberal member, and I think it was that wise member for Mississauga South, when making her presentation, who indicated that if people were not Progressive Conservatives, sometimes they did not think they could call her.

I think any impression left to the contrary or given by mailouts which clearly associate the status of MPPs with their status as party members would be a deterrent to people understanding that our obligations are much broader than the partisan nature of our tasks.

Each of us has had people who have come to us. Some of them are people we meet on the street during campaigns, campaigning for somebody else, but who understand the system very well. Others are people who are novices, although perhaps affiliated with a party for the purposes of elections. Some are apolitical and come anyhow, but there are those people who could feel, if we tend to take any steps towards partisan designation, that this is a particularly party-oriented position.

I think—although the last few days may tend to break us into government, official opposition and third-party



ranks—there are times when real work is done outside those partisan positions. It is sometimes more difficult when people get their policies in a row and do not want them disturbed, but there is real work done here as members, only and solely as members. If we move to change that status in any manner, in my belief, we disturb the balance of our responsibilities publicly viewed.

I do not have much else to say, except, again, a personal observation. We have moved in the last five years to increase the ability of communications by the members to their constituents. I think we now have three constituency mailout privileges. They can be done at any time, on any subject of the choosing of the members.

I would be concerned if there was a move to inappropriately increase the money-spending ability of the members. I do not want us to cut back our budgets necessarily, but at the Board of Internal Economy—and I see that there are at least a couple of board members here with me—we are now going through a certain exercise to see if our budget can be reasonably delivered. I think that is probably the best way to describe it. I would think we have adequate means now as members to communicate with the constituents in a manner that is appropriate to a member, without looking at more ways of increasing that.

I think that basically is about all I have to say on this second issue. If there is something I have missed, I am prepared to make a comment if it would be helpful or relevant.

**Mr Owens:** Thank you, Murray, for your presentation. Let's use the best of intentions as our basis for discussion. If an honest mistake is made and the logo ends up on a mailing, for whichever particular party you are talking about, where do you see the onus for payment? In this particular case, to pay for the costs of the printing and the mailing could be quite onerous on the individual. Where do you see the onus lying at this point?

1550

**Mr Elston:** I think on the first occasion that it is quite reasonable that the caucus should pay. They obviously are not budgeted for, but I think in the circumstances, since the caucuses have the obligation to provide the enforcement for continued adherence to the guidelines, if they allowed some material out which did not comply on the first issue, then that member should not have to pay for it himself, it should be paid on his behalf by the caucus. I think that is quite appropriate.

If it occurs a second and subsequent time, in my view it is up to the caucus. If it is going to pay for it, or at least reimburse the Legislative Assembly, it may wish to deal with the offending member of caucus who is a repeat offender. For first-time offenders, novices, I do not have a sense that the whole cost should be visited. It is their responsibility having sent it out, not knowing the guidelines, one time maybe, but the caucus is required to give all sorts of orientation instructions to new members, and I know that a lot of people have received an awful lot of copies of householders and other things which could have been the format for the delivery. That is my impression.

**Mr H. O'Neil:** Mr Chairman, I would like to hear from all three and then maybe have the three of them sit up there and just ask questions or just have a general discussion. I think we are trying to arrive at the same thing.

**Mr Eves:** I am a little bit out of practice.

**The Chair:** Is that agreeable to the committee?

**Mrs Marland:** Sure.

**The Chair:** If we could have the Honourable Shelley Martel step forward, please.

**Hon Miss Martel:** I want to thank the committee members for the opportunity to make a presentation here this afternoon. I have had an opportunity to look through the material, although I have not had as much time as I would have liked to make some preparation.

We did run this by our caucus yesterday in the fullest sense: Did people want to see changes with respect to the use of party insignia on constituency offices, in mailouts, etc? I also ran it by some of my cabinet colleagues this morning and they said to tell all of you that it was fairly divided. So I am not coming here to represent a consensus.

The point I would like to make, though, is that if this group is intent on making some change, and I think that is a realistic thing to look at, it should only be done with a consensus of all three parties. If there is some room to move and some agreement can be made there, then we would be supportive of that. But I am certainly not here to say what I think should be imposed in any way, shape or form. I wanted to make that clear before I began.

First, with respect to the case of Mr Perruzza, if you are going to go after what was done in this case, then I suggest you go back and take a look at all of the material that has been produced in this place with respect to pamphlets and mailouts and with respect to signs on constituency offices since this policy was introduced. I think I can tell you very clearly—and this is not hidden to anyone—that all three parties and members of all three have in fact gone beyond the rules that have been laid out. If that is the tack you are going to take in looking particularly at Anthony, then I suggest you go back and take a look at everything that has been done.

I can tell you that I have brought my own, because I thought that I should be fair to everyone. You can clearly see that it says, "Shelley Martel, New Democratic Party." This was put out in the fall of 1989. I am not trying to hide anything. Bud Wildman had his own in July 1990. I have stuff here from the Tory party as well. I guess I would argue that just the red would throw me into a bit of a loop, just as the green insignia that Murray talked about would throw the Liberals into a bit of a loop. So I guess the point I want to make is, if you are going to go after people, then you had better take a look at what has happened over the past number of years.

I just raise another point that on a particular Liberal member's constituency office there was a big red L which was in place for the last three years. He is now defeated, but that was there and people saw it.

I guess my opinion at the end of the day is that we have all been guilty. Ernie has not, and he will make that clear, but I certainly have and I am prepared to admit that here. I



think there are a number of members who have past and present, from all political parties, and if you are going to go back and have people pay, then I would encourage my own members to go back for a number of years that this has been in effect and get everyone in that little net.

**Mr H. O'Neil:** I do not really think the committee was asking the three of you to come here to try and justify it or that we were going to try and nail somebody to the cross. I think we were trying to get some sort of consensus on what has happened and come up with some sort of a solution or rules that everybody can follow so that no one gets into any trouble.

**Hon Miss Martel:** If I might, I was following up Murray's suggestion that the member should repay. I do not think that is the fairest way to proceed—that is my personal point of view—because we have all been guilty. So if that is the way this committee decides to go, I would want my members to be arguing that we take a look at the whole picture then. I felt I had to say something in terms of the particular case, because I thought we were also asked to make some comments on that.

My personal view is probably a little bit different than what some of my colleagues have left with me. My own personal view, let me make it clear, is that we are all politically partisan beasts when we come to this place, regardless of which side of the room we sit on. Therefore, I have no problem personally in having an identification on my mailouts with respect to who I am and which political party I represent. I make political speeches in the riding. The letters I write, both in opposition and now, are political. When I run in an election campaign, people know who I am and what party I represent. So I find it a little bit strange not to continue that practice. If people are offended by getting this in the mail, the simple solution is throw it out. But I think the voters in my riding have a right to know who I represent, what political party, and the views that I am expressing on behalf of that party.

I appreciate Murray's sentiment with respect to having that identification on your constituency office and making people fearful or not want to come to your office. If that is the case, then perhaps you do not want to put that on your office and your office should remain as neutral as possible. But I suspect that mailings that come from me, just like the speeches I deliver and the letters I write on behalf of constituents, are political and I have no problem putting my name and my own particular party on that.

It goes a little bit further, because a number of us also do readings, for example, at Christmas, Easter, etc., and you would put something in the paper. Then again, I would have no hesitation to say, "Merry Christmas, Happy New Year, Shelley Martel, MPP, NDP." I do that on a cable show that I have now as well. I clearly identify who I am and the views that I am expressing. That is my personal view.

I can say again, though, that within our caucus there is a split on that. There are a number of people who do not feel right about going the whole length and having that on our newsletters. So again, I would say that you would probably want a broader discussion, if you can find a happy

medium. If you cannot find a happy medium, then I suggest you go back and have the non-partisan material appear.

There is a further question, I guess, about who adjudicates all these matters. I found it a little bit strange that the Speaker would make a decision with respect to Mike Cooper's case but then refer Anthony's case here. So I think there has to be a clearer understanding of who would adjudicate the matter. My feeling is that if this board decides to change the rules or maintain the rules that are in place, the Speaker at the end of the day should be the final arbitrator. He is elected by this House now. He is no longer appointed by a particular party. Some would say that the party that has the numbers still wins in that game, but I am just trying to determine the fairest place. If it comes to this committee, this committee also has a majority of people who can vote things down. I would hope that the Speaker might be non-partisan enough and maintain his distance from the assembly so that he could make the final decision based on the rules that come out of this committee.

1600

I know that in some other jurisdictions, as we read through the material, the Board of Internal Economy has that right. I would find that a much more partisan place because of the four board members who represent the government. Second, a number of people who sit on the board are not political people; they are bureaucrats and I do not think it is their place to be making a comment or to be involved, quite frankly, in those kinds of discussions. I think that should be taken off their hands and dealt with by members. But I would strongly urge, at the end of the day, that the Speaker have that right.

**The Chair:** Thank you. We agreed to hold questions until we have heard from all the speakers. Mr Eves.

**Mr Eves:** I am here just to lend my two cents to these deliberations. I can say that it has always been my opinion, since being elected in 1981, that a member was not supposed to show political affiliation either by way of logo or name on the constituency newsletter or mail services. I have taken great pains over the years not to do so, although I am quite aware, as Shelley and Murray have pointed out, that there have been instances where members of all three political parties have breached those guidelines and rules as set out, at least in my opinion. I think the rules with respect to constituency newsletters and mail services are quite explicit. Members may not print or mail, at the expense of the Office of the Assembly, any material of a partisan political nature. Surely that includes one's political affiliation or logo, in my opinion.

There have been instances in the past. I have sat on the Board of Internal Economy since 1985, I believe, and the previous Speaker had a policy—I am not saying it is right or wrong—that he would decide these matters but he would always seek direction from the Board of Internal Economy. I do not think I ever remember a case where it was not done by consensus of all three parties, where the Speaker has taken action. I do not think any such matters ever come to a recorded vote before the board. I think board members have hashed it around and eventually agreed



upon a consensus and given the Speaker direction if that is what he has desired. That is just my experience.

I quite agree at the outset with the comment that Shelley made: I do not think this committee or anybody should be proceeding to change the rules, unless there is consensus by all three parties, because I think it is going to reduce the whole issue to a very partisan political one and I do not think it should be reduced to a partisan political issue at all. When you are elected as a member you are elected to represent each and every one of your constituents, and party affiliation should have absolutely nothing to do with representing each and every one of your constituents to the best of your ability. I do not care what party you belong to.

I think the caucus print shops should be responsible for enforcing these guidelines. I know that in the past the director of our caucus print shop has informed some of our members—I am just speaking from my personal experience—that what they were doing, in his or her opinion, was not considered appropriate and those things have been changed. Obviously, there have been a few that have gone out that should have been changed but were not changed, and I am sure the same situation exists for the other two caucuses as well. Probably the caucus print shop is the most appropriate place to try to police these matters.

I just feel very strongly that when you are spending public money—if your own riding association or your party or your caucus wants to pay for a mailout or any other form of advertisement or communication, that is fair game, I guess—but if you are asking the Ontario taxpayers to pay for it out of the public funds, I do not think party affiliation, quite frankly, has any place because you are asking every single individual in the province of Ontario to foot the bill.

I do not think it is appropriate to say that I am entitled to promote, in my case, the Progressive Conservative Party when I am asking for every resident in the province to contribute towards what I am putting out. I can tell you that I personally around Christmas time would not ever think of using my party affiliation on a Christmas card. In fact, I think my constituents would be most offended if I did. I have been in the practice of having my family members sign their names and I would not even think of putting a political affiliation on it. I cannot imagine anything more crass or crude. That is just my personal opinion. I have even gone to the point every year of putting an ad in all my weekly newspapers around Christmas time, usually with a family photo, but never the words “Progressive Conservative” or any other party. I insist that my local riding association pay for that ad, although I never use “PC” anywhere in the ad. That is how strongly I feel about the issue.

I do not think there has been a great problem over the years. Sure there have been individuals, and you always have this instance when there are a great number of new members elected. It is not the first time it has happened and it will not be the last and I do not think it is the end of the world. I just think everybody has to understand what the ground rules are and what the policy should be, and that is the policy as I see it.

As to who should be ultimately responsible, I guess from past practice, the Speaker, or perhaps if you really want

to get novel you might even consider the Lieutenant Governor, but I do not think he would be too amused. Consensus has worked in the past and I see no reason why it cannot work in the future as well.

**The Chair:** I assure the three guests present that this committee works on consensus and a very non-partisan basis and I think it is a pleasure being on this committee compared to some other committees in the House at present. I believe, Carman, that you are first?

**Mr McClelland:** Mr Chairman, it seems to me that Mr Eves has really articulated the underlying principle of what is at issue, and that is the appropriateness of general revenues being used for the extension of a partisan nature. Miss Martel said in her comments that we all are partisan animals by virtue of the fact that that is part and parcel of how we arrive here. That is factual and I think very accurate. Then you beg the question: What is the happy medium? Why do you articulate the position and the appropriateness of the use of those funds in guidelines? It seems to me that the task at hand is to look at the guidelines. Are they to remain the same? If they are to be changed I agree with your principle that they should be changed on the basis of consensus.

Then, as you ably identified, you get into the difficulty of saying who decides whether the guidelines have been breached. That is going to be there regardless of whether the guidelines are changed or not. I simply throw out for consideration the fact that you indicated that even within your own caucus there is a disparity of opinion. It seems to me that is indicative of the fact that there is probably some wisdom in numbers, and whatever committee, whether it be the Board of Internal Economy, given its makeup, or this committee or wherever it may be, if the Speaker, he or she, chooses to make the decision or we allow him or her to make that decision, the practice as you indicated has been to seek input from others.

I really do believe that within the collective group of half a dozen or a dozen individuals, there is wisdom. I think it was Solomon who said that in the counsel of many, one finds wisdom. That is nothing new and I really believe that. It would be appropriate to have that mechanism of bouncing ideas off others and finding a sense of how things ought to be dealt with in the instance of potential violation of guidelines.

When all is said and done, it boils down to this, it seems to me: We either have the guidelines and we understand them and we try and abide by them, or we make them realistic. You are suggesting that they are not realistic at the present time; that each party bends them a little bit. If that is the case, let's look at it but let's remember the fundamental principle that Mr Eves brought forward. Is it appropriate that people pay for what is blatantly partisan? I think you would indicate your personal opinion and I qualify that because it was your personal opinion. You were very forthcoming about that. There has got to be the happy medium.

The difficulty is, where is the happy medium? It is a sliding scale, it seems to me, depending on the people who are looking at it at any given point in time and the particular



political climate at the time. There are times in the House where things are very charged politically; witness the last couple of days. There are other times when it is much more subdued, and I think that is the difficulty when we get into some of those arbitrary decisions. We either have the guidelines and we live by them or we do not have the guidelines.

Guidelines, in my view, are necessary because I do not think it is appropriate that we have blatantly partisan stuff. You do not want anyone sending to the people of Brampton North literature that castigates the government—I think that would be totally inappropriate—using the vehicle of Legislative Assembly financing. On the other hand, I do not think it would be appropriate for you, as a minister of the crown, to use taxpayers' money to trumpet the tremendous achievements and vision of your party and your government. So how do you find that balance? That is the question you beg, and it seems to me the only way to do that at the end of the day is to say that you remain as apolitical as possible. The guidelines have worked, it seems to me. I am a relative newcomer. I think the incidental violations are not of the type that causes anybody great concern, but I think that when you begin to say, "Well, that's okay," it begins to erode the whole efficacy of the guidelines.

In summary, I think we have to look at it very, very carefully. If the principle Mr Eves has articulated is a valid principle, then the guidelines ought to be drafted accordingly and ought to be adhered to. To the extent that people make errors in judgement, as will happen from time to time, they can be dealt with on an individual basis. But I think for us to throw up our hands and say, "Well, everybody does it, therefore, we should throw out the guidelines," is a very dangerous track to get on. I would just leave that with my colleagues for consideration as we report back to the Speaker. I want to thank all three of you for your input.

1610

**Hon Miss Martel:** If I might just make a comment, I think if you were to take a large reading of what a number of us are putting out, it is not just a question of whether it says "PC" on the top or "NDP." The government will write about the government's achievements. It does not matter who it is. That is what I do now. When I sat in opposition, I condemned the government and that appeared very much in my written material. I suspect that I am not the only one. Is that a violation or not? How fine a line do you draw? We have come here because "NDP" appeared on a particular letterhead. But do you then start to read in and through all the documentation?

**Mr McClelland:** That is why we are here, quite frankly. My understanding was that it was to look at the guidelines, that general issue.

**Mr H. O'Neil:** But it is a good point.

**Mr McClelland:** It is a good point, it is a point well made, but I want to understand that we are here in a more general nature.

**The Chair:** It is a general nature, plus the fact that the Speaker has referred that specific point.

**Hon Miss Martel:** The problem I have is that you may get a particular piece of material that does not have "PC," "NDP" or "Liberal" on it, but the very nature of what is being written is highly partisan—just in the reading, I mean—either condemning the government or praising the government for the work we have done. It might not come to the attention of this group or the Speaker, because "NDP" or a logo does not appear, but what is written is very partisan. So it seems to me that if the content is all partisan, what difference does it make to have the "NDP," "PC" or "Liberal" on it? Because by the very nature of reading the whole thing you get a very direct sense that people are either for the government or against and why and have a good reading of what their position is and probably align them to that political party. The only thing that is missing is the actual label. That is what I find hard. You have asked a very valid question: When have you gone too far and what is a happy medium?

**Mr McClelland:** When is enough enough?

**Hon Miss Martel:** But I think in a number of cases putting the "NDP" in is not going too far; it might be what you read in the content that has gone too far. So my view is the content is probably going to show who I represent and why, so what difference does it make if I have my party affiliation on it?

**Mr McClelland:** I do not want to join in a debate, but nevertheless, I want to ask, would you then take the position, that whatever goes goes, because at the end of the day people are going to do and say what they want? It seems to me that is the ultimate conclusion, though. If we are going to attempt to have guidelines, then we have them. If we are not, then do we just do whatever we want, say whatever we want as members? I mean, is that appropriate? Surely it is not.

**Hon Miss Martel:** Carman, what is the difference between what you say in the House, which is recorded and can be sent out for public use, and what you put out in your newsletter? Surely you are partisan in the House in the speeches you make. We just went through the debate on Bill 4; it was highly partisan. That is the nature of this place. All that is public information and can be sent out to people. So what is the difference?

This is not to attack anyone—ours is the same—here are all the releases, right? I could whip out to you an NDP release as well. At the end of the day, this is paid for by the public too. It may come through our individual caucuses, money allocated to us by the BOIE, but all this is paid for by the taxpayers and it is highly partisan.

**Mr McClelland:** Yes, exactly. The question remains, do you have guidelines? Where do you draw the line? I guess the question I am asking of you, Minister, is, do you feel it appropriate to have any guidelines at all?

**Hon Miss Martel:** I would say my personal feeling is that on literature, the stipulation now, which is that you cannot put logos on, should be taken off. That is my personal opinion.

**Mr McClelland:** But should there be any guidelines at all? I am just curious. Do you have a sense of that?



**Hon Miss Martel:** I think there is a very legitimate concern that has been raised with respect to a fear that people might have about coming into the constituency offices because they see “NDP,” “Liberal,” PC, “that they will not want to come in, they will not feel that they have a right to have their case heard. I would argue then, do not put it on your constituency office because that may make people not want to come into your particular place. But written material—I find a hard time distinguishing what we say in the House, what could be public knowledge and printed and given to people, as any different from what we put out on the street.

**Mr McClelland:** I will ask this just as a rhetorical question, I am not necessarily looking for an answer: I put out a householder conveniently in late August, being privy to information that ultimately will be the current Premier’s call; my guess would be some time in June 1995—I may or may not be wrong—and conveniently everybody’s householders go out of a very partisan nature. I ask you to consider the appropriateness of that ultimately, because that is what that would lead to. It is just a question worth considering.

**Hon Miss Martel:** I think you are fooling yourself if you do not think that already happens.

**Mr McClelland:** I say of a totally partisan nature.

**Hon Miss Martel:** Excuse me, but I got a copy of Sterling Campbell’s, with a long list of achievements of the Liberal Party, delivered to me less than four weeks before the election call came.

**Mr B. Ward:** I got mine two weeks before.

**Hon Miss Martel:** I am sorry, but I assume that went on across most Liberal ridings. That is not with any malicious intent; I think that is what happens. I know I would certainly try to get one out. Because I expected an election call, I sure as heck got a newsletter out too. I suspect everyone here is going to do that regardless. We will not have much more insider information than you will, but we will all be trying to get our newsletters out at that point, and I suspect they will all be partisan.

**Mr Elston:** Do not count on it.

**Hon Miss Martel:** I was trying to get mine out too.

**Mr McClelland:** Not to engage in debate, but there is a clear difference between a newsletter and an election piece.

**The Chair:** Mr Eves, did you want to make a comment?

**Mr Eves:** The only comment I wanted to make was while Carman was talking, before Shelley even spoke. That does not preclude, in my opinion, being critical of the government or being supportive of the government, or talking about the opposition, but I really think you have to draw the line somewhere. I do not see anything wrong with the guidelines as they exist and I think that, by and large, the majority of members, regardless of who has been in power over the last 10 years, have been able to confine themselves and live within those guidelines. Sure, there have been mistakes, and most of those mistakes have been by relatively new members of the Legislature. I think that has happened in all three parties, and I think it will con-

tinue to happen as long as we are human beings, but I really think you have to have some guidelines.

I think there is a bit of a difference between something that is funded by a caucus office, although ultimately I realize the money comes from the public purse, between something that a caucus puts out and something that an individual representative of every single person in his constituency puts out. I think there is a big difference, and that is why we have a heading called “Constituency Newsletters,” and I think in those instances we should try to be—I know it is difficult, but we should try to be—the less partisan and political the better, in my opinion. I think we are doing the public a disservice if we do not try to do it.

1620

**Mr Elston:** My point is actually going to focus on the issue of caucuses as well. The determination has been that caucuses are funded to do caucus work, which is viewed as a more partisan type of activity, but certainly as individual members we represent a broader group of people who make up our constituencies.

I also want to comment briefly on the issue of print shop control. I know it sounds as though it would be a great place, but there are some members who actually access print shops outside and then forward the invoices on. Ultimately, I believe there has got to be a caucus review of the appropriateness of the material. I saw some of the material the clerk kindly sent to me, and I thought it was a relatively good idea to have the invoice if it came from an outside print shop, or even from your own print shop, attached to a copy of the printed material so that there had to be a determination that there was no violation before it was submitted for reimbursement to the Legislative Assembly in those other jurisdictions. I see nothing particularly wrong with that.

I agree with Carman—and actually I think he was speaking fairly closely to what Shelley was saying—on the issue of balance. I do not want to put words into anybody’s mouth, but for me you get into a very difficult time if you start trying to cull out what words may be offensive. For me today in the House a sentence like, “Please be fair,” has a somewhat different meaning than it does for somebody on the other side of the House. It is very difficult for us to try and set a series of guidelines which say, “Please do not send out ultimately partisan material.”

The crafting trade, when it comes to language skills and the manner of expression, is such that a very good job can be done with individually offensive words. I think what we have to do is let people generally understand that the nature of the material is to be non-partisan, and if we can have some visible signs that can be easily removed, that is one thing, but boy, once you start dealing with the members’ expression in their own constituencies, that would become very difficult.

I would like to think, for instance, that the member for Welland-Thorold, as a member who was in cabinet, will want to write a piece at some stage, indicating how he sees his relationship with the government. It could either be offensive or inoffensive, depending on which side of the—



**Hon Miss Martel:** Why would he want to do that? He might want to get back into cabinet.

**Mr Elston:** No, no. It may be, from his point of view, just a matter of indicating that he is still a good and solid member in support of the government. He is not going to go around condemning them necessarily, but the trick may be that he will want to show his support for their initiatives.

**Mr Eves:** Have you seen his newsletter?

**Mr Elston:** No, I have not.

**Mr Eves:** Just kidding.

**Mr Elston:** Actually, I am drafting it now. I just did not want to tip my hand at the moment.

**Mr Eves:** Are you proofreading Peter's newsletter?

**Mr Elston:** I am drafting it.

From my point of view, though, the obvious can be eliminated, but the written material is something that each person is going to have to deal with. Shelley is right, if I may be so bold as to refer to a minister as right.

**Hon Miss Martel:** Oh, God.

**Mr Elston:** People do dispense with them fairly quickly. In fact, in the apartment building that I attend, whether they come from Minister Akande or from the federal member, MacDonald, they are dispatched in almost equal volumes into the waste basket.

**Hon Miss Martel:** I read Zanana's.

**Mr Elston:** No, I am looking at the waste baskets. People throw these things out. The issue of how effective our communication is and how willing our constituents are to receive this stuff may be another issue for another day. The amount of money we spend, when you say there are three printings available, is something that you might want to look at when you see so many people throwing this material out. That is another issue altogether, but it still comes to the issue that Shelley and Ernie and I are dealing with, with respect to our budgets, which have been increasing at fairly progressively high rates. For another day, you may want to say three mailings but the cap for the whole thing is X or something. Content you have to be really careful with, and it will probably be left for somebody to complain about some day when they have read theirs or something, who knows.

**The Chair:** We have six speakers left at this point.

**Mr B. Ward:** First of all, I agree with Hugh's earlier comment. I do not think we are here to trap someone or condemn an individual. That was never the intent. I think the intent was to point out some discrepancies in some members' householders with the guidelines. So I agree with you that we are here on a more global basis. Let's look at the guidelines to see if they are appropriate, and if they are not, let's change them.

My two observations: First of all, I do not think we should allow any type of partisan signage or letterhead etc to be exposed in the riding association offices, because my fear would be that it becomes—

**Mr Elston:** The constituency office.

**Mr B. Ward:** —the constituency office, because my fear is it would become a riding association headquarters. I

think that is one thing that we should look at and avoid at all costs. The constituency offices have to be open to all the public that we represent in our respective ridings. What could happen, I perceive, is that party members in the respective ridings could interpret, because of the amount of partisan signage, that it becomes their office and riding association business may take place. I do not think that is one direction we should take.

I really do not think we are censoring content of householders, because once you get into that, you are opening up a whole ball of wax that I do not think this committee or anyone wants to explore when dealing with a form of censorship.

So the main issue is, do we allow insignia of our respective parties on our householder? That is the basic issue. The feeling I get from the two who are here and the one that left is that there is not going to be consensus. Shelley has expressed her personal opinion that it should be allowed and it seems to me Murray has expressed a fairly strong opinion that it should not be. If that is the case, I would prefer that we left things the way they are.

However, a suggestion could be made, since times do change and individuals change. Perhaps this issue, reviewing guidelines, could be one of the first items of discussion for this committee in any new Legislature, because it is my understanding that this issue is being reviewed at the federal level to see whether or not it should be more partisan. So it may be appropriate to avoid any misunderstandings that the three House leaders sit down with the committee as soon as possible in any new Legislature and discuss their ideas. If the guidelines are modified, at least we should avoid any future errors of judgement or misunderstandings.

I am totally against any partisanship in constituency offices. I think that since we do not seem to have consensus on household insignia, we should follow the guidelines and make sure that any identification of parties is removed, and the fact that it could be reviewed as soon as possible in any new Legislature may be something this committee would like to discuss and make an appropriate recommendation.

**Mr Chairman,** I realize you had to step out for a minute, but that was the gist of my comments.

I think there is adequate opportunity for the political parties to do mailouts in the ridings at their own expense, which is done, I believe, through fundraising etc. I received a letter from Mike requesting some funds. Unfortunately, I am a little bit short.

**Mr Villeneuve:** I hope you are going to contribute.

**Mr B. Ward:** I am a little bit short this week.

**Mr Elston:** He is just telling you where the money is.

**Mr Villeneuve:** Next week.

**Mr Elston:** They think you are one of their better supporters.

**Mr B. Ward:** If the three House leaders would like to comment on those observations, I would appreciate it.

**The Chair:** Unless we want to go around the table and get all the questions out and then maybe have the three House leaders comment on them.



**Mr B. Ward:** Probably there are a lot of similarities.  
1630

**Mr H. O'Neil:** I guess we are all going to be partisan when it comes to news releases or whatever it is, and as Shelley says, the content of some of the householders sometimes can be really political. But again, when we come to the householder or, as was mentioned by Brad and a couple of others, the constituency office, I do not think we should have any party designation.

On a personal basis, because it is being paid for by the assembly, I feel that the householder again is something where you talk about some of the things that have happened in your riding, some of the grants that have come into the riding, some of the things that are going on at Queen's Park. Sure, everybody is political, pretty well everybody; you know it is going to have a certain tone, but again, I do not think you get into that if you try to check over what everybody has written.

Again, Shelley mentions the colour. You know, I use red on my letterhead, I use red on my householder and red on other things. If you want to say that you are Conservative, you use blue. I do not see any harm in that, but again I think the householder and your offices should not have a political party designation on them in wording and something like that. I think people appreciate that a little more.

**Mrs Marland:** I want to say at the outset, no matter what this committee decides, I am going to continue doing what I am doing.

**Mr Elston:** What are you doing?

**Mr Villeneuve:** Straight and narrow this lady walks.

**Mrs Marland:** There is something about teaching old dogs new tricks. I want to tell you that I have been in politics a very long time.

**Mr Elston:** Not that long.

**Mr McClelland:** She started very young, though.

**Mrs Marland:** I have not checked, but I know that my plurality in this last election, if not the highest in this Legislature, was in the top three or four, and I want to say that in my riding, to get 55% of the vote is not done by misusing their money to tell them about my party affiliation. I cannot put it any more clearly than that, and we are very naïve if we think that because we are in the government or we are in the opposition or we are in the third party that the public really cares on a lot of the issues. Frankly, I do not care who looks back over the householders that I have done in the six years I have been here, and I have done at least two a year and I have done a calendar. I frankly do not agree with what Shelley says, that we write everything in a partisan way. I report in the calendar—and Murray will be interested in this. Even on the auto insurance bill, I reported what the bill meant to those people reading it. I use the householder as a vehicle of information about legislation that is being passed.

I think, if we are using the taxpayers' money for those householders, then we had better use it as a tool of information for them. In my riding I am talking about 42,000 households. Now, of the 42,000 households, if I am very antigovernment, whoever it is, I am going to offend a third

of them. If I am pro our party's opposition role in something, I am going to offend some whom I might otherwise be encouraging. You have always got to look, I think, at who it is you are giving the information to, who receives that householder in their homes—and everybody knows they pay for it, by the way. There is never a question about who pays for those householders.

When they read it, if they happen to be Liberal and the Liberals are the government and all you are doing is taking four or eight pages to damn their party, there is no way you are ever going to impress them with your own individual credibility. And it is perfectly true that if you can impress people with your own credibility and your own sincerity and your own commitment to serve them at the constituency level, you can pick up support. Now, this is free advice for those of you who are going to face your first re-election campaign five years from now. But frankly, if you are very partisan, it does not matter whether you are government or opposition, you do put people off and you put them off for the fact that you are using their money to promote your own cause. But if you are giving them information that they need on what is going on at Queen's Park, which I do, or what is going on in my riding that comes under provincial jurisdiction—I mean, if I have a filthy industry that is spewing pollution into the atmosphere, which I happen to have, or something goes wrong with the sewage treatment plant and it is a provincial jurisdiction, I tell them exactly what the provincial jurisdiction is, what the province is responsible for, and what they are empowered to do to solve their problems.

I tell them about other things their provincial tax dollars can provide for them. That is the kind of householder I do, that is how I use my householder. So I support totally the existing policy on constituency mail and householders and constituency office signage. Funnily enough, I do not even have a sign outside my constituency office because I am now in an area where signs are not even permitted.

**Mr McClelland:** It is in the window.

**Mr B. Ward:** How do you know?

**Mrs Marland:** You cannot even read it from the road.

**Mr McClelland:** You can read half of it.

**Mrs Marland:** I simply say to you that you might think that because our party is the government or your party is the government, that is an advantage. Well, it is an advantage for the people who support you now, but it is not an advantage for those people who would like to know a little bit more about you. You put them off because right away you are so partisan, you are not giving them both sides of an issue and giving them credit for having their own intelligence to decide which they support. Like us in the House, if we are being honest, which we are, there are issues in these chambers where all three of us can agree with the position of the other parties from time to time, as individuals.

We cannot as a caucus, because this is the caucus position, but as individuals—if the government does something good, quite frankly, I will say I agree with that position of the government because I think it needs to be said. Our readers do not know what we stand for. They do



not know what we believe in. So I think these householders are a very important obligation on our part to communicate with our constituents and we better not miss that fact.

The other thing I want to say, because it is interesting with our three House leaders here—Ernie, you might want to hear this because you might agree with me.

**Mr H. O'Neil:** You had better, Ernie.

**Mrs Marland:** There is one exception to this party designation that I am quite happy to put on the record and I want to put on the record. I think that if Shelley is the New Democratic Party's House leader—or the PC House leader or the Liberal House leader—she should use that as a title. It is their option, but I think that if they have a title associated with their job as an elected person, they can use the party designation because it is part of their title. If they are the PC whip or the Liberal whip or whatever, it is up to them. I do not see that as a party affiliation the way you can put New Democratic Party or Progressive Conservative Party on your householders.

So I make that one exception. I am thinking of their business cards primarily, quite frankly, and I do not even know if they have them on their business cards. But I am simply saying that if you are a House leader or a whip or something, that is an honour bestowed on you. It ends up being approved by a resolution of the House, I guess, when those appointments go through.

Interjections.

**Mrs Marland:** Well, certainly committee chairmen are approved by a resolution of the House, because we approve our committee makeup in the House.

**Mr Eves:** Just the membership.

**The Chair:** Could I just jump in here? There are a number of other people who want to speak. I was wondering if we could limit our discussion to the questions, because I know the House leaders have other duties to perform and time is getting on. I believe, Mike, you are next.

1640

**Mr Cooper:** I want to reserve my time to debate later. Right now I just want some clarification. I put a trillium on my sign and what I have a problem with is "MPP." I really have a problem with that because a lot of people do not understand "MPP" and "MP." I wanted to clarify that I work for the province of Ontario and I think most people in Ontario relate to the trillium. What happened was that my trillium was halfway between the trillium that we hand out and halfway between our logo trillium. They ruled against it and I paid for it. I fixed it and I have put the Ontario trillium on it now, so that is no problem. But one of the things that was brought up here is that we have to distinguish between identification and partisanship.

I think there are a lot of ridings where you have to identify yourself as MPP, such-and-such a party, because there are some ridings that just do not relate. When they see the party they can identify it, especially with the householders that are coming out. That is one thing we are going to have to clarify, so that is part of the identification

thing. But we are talking about whether it is paid for out of our pockets or by the finance branch. What I am asking the House leaders here is, if I choose to put a sign up and I pay for it out of my pocket, is it all right to put "Mike Cooper, MPP, NDP"? Is this what you are saying? Then we do have to redefine the guidelines.

**Mr Elston:** No, I think my reference was basically to the mailouts. In a case where there are repeated offences, it is up to the caucus, but, let them deal with it. On the issue of a constituency office, I do not care how you get the sign up, it should come down. I do not think that if you bought your own—

**Mr Cooper:** So we actually have to review the guidelines, is what you are saying.

**Mr Elston:** There is just no way that you should put a partisan designation on your constituency office, but on a constituency office, I do not care if you pay for it. You can pay for your mailouts if you want to show your affiliation and do all that sort of stuff. That is totally up to you. I am not going to suggest that because I say something, that should stop you from mailing out your New Democratic Party material, but just do not have it go through the Legislative Assembly.

The constituency office, though, I do not care whether your association pays for it or you pay for it, I think that would be totally wrong and should be removed right away.

**Mr Cooper:** I totally agree with you and I think that is why this committee should look at these guidelines and figure out exactly where we are going.

**Mr Owens:** Mr Chair, it sounds like we have reached a consensus on the constituency office issue. I firmly believe that the constituency office should be a place where non-partisan activity goes on and where work with constituents is paramount, rather than advancing the goals of our particular party.

In terms of the householders, however, we talked about changing the guidelines and it is my feeling, again, that no member would be coerced into or forced to use his or her designation on the householder or the information that has gone out, and I think that is an important difference. Just because the guidelines say it is all right to put the NDP, the Liberal or the Conservative logo on does not mean that you have to do it. I think you have to be sensitive, as Ernie has suggested, to the needs of the constituents, and I agree that putting PC or NDP or Liberal logos or information on Christmas cards is completely in bad taste.

But again, in terms of changing the guidelines, it is to avoid the kinds of discussions we seem to be having in the House that take up the time the opposition has to ask its questions about what the government is doing, to present the latest brown envelope, or whatever the goals and aspirations are of the opposition. Again, at the risk of repeating myself, there would be no onus on a particular member to use any designation on his or her letterhead. I think it just takes it out of the realm of debate and leaves more time for debate on issues of substance, and this is clearly why we are here, not to argue about who has whose letterhead and who is putting what in his or her leaflets.

**Mr Villeneuve:** Mr Chairman, I will not be too long.



I fully agree with the constituency office. That must be. I feel our householder is an extension of that constituency office. The calendars and the two householders I sent are informative. They will have clips of my presentation in the Legislature. Whether my constituents agree with it or not, I do not know. But if we allow the inclusion of party affiliation in the extension of that constituency office which is the householder, we have lost control.

I am not here to witchhunt anyone. I tell you, when you live in the shadow of Parliament Hill, maybe it is better not to describe your particular party affiliation. But that is a story for another day.

I firmly believe that the householder is the extension of your constituency office as a piece of information, and I just cannot in any way accept party affiliation because at that point we are sending a wrong signal, a wrong message and, God, how do you control it? That is it.

**The Chair:** Thank you. I have a point of clarification for the three House leaders as well. We have mentioned the fact of "consensus." I wanted to clarify what they mean by "consensus."

**Hon Miss Martel:** I would have said that if you wanted to look at changing that, it could be done only if people agreed there was some room to move with respect to putting a party label on. I do not hear that, so I would not proceed with it any further.

**Mrs Marland:** No, but the question is—I have raised it with the Chairman—when you are saying "consensus," do you mean consensus of parties? We are a committee, so are you saying that if the Liberals and the NDP feel there should be this change, it goes?

**Hon Miss Martel:** No.

**Mr Eves:** No. All three parties agree, in my opinion anyway.

**Mrs Marland:** That is what the Chairman thought.

**Mr Owens:** As long as we can vote.

**Mr Elston:** It does not have to be unanimous in the sense that the parties among themselves, or inside their own membership, will have a discussion and may then come up with a result. Then you come back together as each of the three caucuses and you say, "We have come to a consensus inside our organization." That is the type of consensus, because you are not going to get unanimous consent of all the members. Consensus would have to be among the representatives of the three parties.

**Mrs Marland:** Consensus is not unanimous. That is the point I am making.

**Mr Elston:** That is right.

**Mrs Marland:** You are giving us a difficult job here. Are you saying a consensus of two parties versus a third party?

**Mr Elston:** No. We are not saying majority. Consensus is not majority. Do not confuse the two concepts.

**Mrs Marland:** No, it is not. It is also not unanimous, though.

**Hon Miss Martel:** If I might, I use "consensus" the way I use it in cabinet, which is that we all come to an

agreement among ourselves, not that one or two people disagree and we go ahead anyway. We come to an agreement or it does not fly.

What I am saying to you is that I have not heard any agreement here, so my personal opinion is to let it go. You just keep the guidelines that are in place and remind everyone of what they are and go from there.

**Mrs Marland:** I see.

**Hon Miss Martel:** I wanted to be clear at the very beginning that I was speaking only personally, that I talked about my own perception in the discussion that went around our caucus and earlier this morning in cabinet, that very clearly, if a consensus could not be reached, that is, if three parties could not come together and make an agreement, leave it. That is what I am hearing: just leave it.

**Mr Eves:** I agree entirely.

**Mrs MacKinnon:** Mr Chairman, I have a question. Inasmuch as it is good enough for the federal government, why is it not good enough for the provincial government?

**The Chair:** Do not get into that argument, please, Ellen.

**Mrs MacKinnon:** The mailouts are clearly identified and I do not have any problem with that when I get one in my apartment. I like to know who this gentleman was, what he represented, where he came from. I do not have a problem with it. When we were in Ottawa, unless I misinterpreted it, I am sure they were in the process of writing up the guidelines in order to identify the parties.

**Mr Eves:** There are a lot of mistakes Ottawa has made that we would not want to duplicate here in the great province of Ontario.

**Mrs MacKinnon:** That is beside the point.

**Mr Elston:** I do not think it is beside the point. I really think we have chosen to be a constituent group apart from those people and I just feel it is better if we stay away from that. You can be as partisan as you want as a member in other ways and you can get money from your constituency association to be partisan and you can make speeches, whatever, but I just think in this sense it is better. I do not think we have to follow the leader or any of the MPs from Parliament Hill.

1650

**Mrs MacKinnon:** Then the guidelines have to be changed because as I read the guidelines, as long as the party or the caucus or government service or whoever it is pays for it, we will not put this on. But if I say "Look, I am going to pay for that myself," I can put anything on it I like. And if I were a millionaire, maybe I would do that.

**Mr Elston:** You can do that now. You are quite free to have your constituency association pay for any material you want shipped out, however you want it identified. You can pay for anything yourself.

**Mrs MacKinnon:** That is what I am saying.

**Mr Elston:** We are just saying that when it comes to the franking privileges and the three paid production pieces you mail out, they should not be identified.



**Mr Owens:** Do these franking privileges include using our franked information on behalf of community groups like the Canadian Mental Health Association?

**Mr Elston:** I think I know what you are getting it, but my opinion is that you use them only for the members' privileges. You cannot substitute somebody else for that. That is my view.

**The Chair:** Do the House leaders want to sum up?

**Mr Eves:** We all agree. It is one big, happy family.

**Hon Miss Martel:** I just wanted to say one thing to the members. Margaret and I get along very well, but we usually disagree and here is another day that we did. I got 59% in my riding and I have blatantly partisan political mailouts and always have. I guess it just depends on the riding you are from.

**Mr Eves:** You have your dad distributing.

**Mr Elston:** That is right. You have an advantage.

**Mrs Marland:** They do not know another party exists in your riding.

**Mr Eves:** Some day they might.

**The Chair:** I wish to thank the three party leaders for coming along here this afternoon. It certainly has given us some ideas for thought.

On the question before the committee, as it relates to the letter sent to Mr Elston and then referred to this committee, the Speaker indicates that it is unclear as to whether the identification of a party affiliation is a violation of the guidelines. He is actually not sure that it is and is possibly seeking direction from the committee as to how to reply.

**Mrs Marland:** How much more do we have to talk about it? If you are looking for a response, I would be willing to say the guidelines are very clear. They are very easy to understand, and having heard from the three House leaders today, there is only one way to interpret the answer to his question.

But I also think I would like our response to the Speaker to be softened by the fact that when we are newly elected and we come into office, those are very legitimate mistakes. Nobody knows anything from anything when we first come down here, and how many of us even go through and study all of the regulations? To be perfectly honest, the answer is that we do not. You come down here and try to get the office organized and get constituency offices organized, and there is so much going on that first year after you are elected that it is very easy to do something in complete innocence that it may be a contravention of a guideline. Well, fine. Now we are told about it and we can correct it. I really think that is how I feel about what has happened.

**Mr H. O'Neil:** I tend with Margaret to, as you say, put people who are new or sometimes even when they are not new—there are mistakes that can be made and there have always been in the Legislature. When we were the government, when the Conservatives were the government and now when you are the government, examples were and are going to be brought forward where people have made a mistake. It is embarrassing, you correct it and you go on.

That is basically what happens. I do not think any one party has a monopoly on being perfect. It happens to everybody.

**Mr Owens:** To my question about repayment of the money: I think, if I am hearing correctly, that we temper the decision with some sense of justice, to say okay, it has happened once and we can be assured that it will not happen again, from this particular individual anyway, and that the caucus or caucuses involved—because it is possible that it is going to happen with your party, Margaret, and with your party, Hugh—that we recommend—

**Mr H. O'Neil:** I do not think you give them a bill for \$40,000.

**Mrs Marland:** I do not think we should recommend that the caucus refund them or whatever. We do not have the power to say that.

**Mr Owens:** No, I am suggesting that neither the caucus nor the individual be held responsible for the mailing and production costs, even though we have suggested that.

**Mrs Marland:** What are you saying? That the Legislative Assembly pay for them to make another mailing?

**Mr Owens:** We have had one particular issue referred to us by the Speaker. The situation is clearly conducive to discussion around the issue, and we seem to have reached a consensus where some of us agree to disagree. In terms of the issue that was referred to us by the Speaker, I thought I was hearing, and you can correct me if I am wrong, that while the member may have violated the existing guidelines—and it is probably pretty clear that he has, without trying to weasel on the issue—the caucus not be held responsible, nor the individual, for the expense of the production and mailing of this particular leaflet.

**Mr H. O'Neil:** Which case is this?

**Mr Cooper:** Mr Perruzza.

**Mrs Marland:** I will answer your question. That is a calendar, is it not? Yes. Now, we are talking about something that has already gone out. It has already been paid for. There is no need to discuss the expense of it. It is already gone. It is past.

What our discussion is about today, as far as I am concerned, is the issue that it raises: What are we recommending from this day on? As far as I am concerned, that was paid for by the Legislative Assembly because it was a calendar. But it is gone. So we just leave it as it is.

**Mr Owens:** Margaret, I understand that.

**Mrs Marland:** You cannot reverse that.

**Mr Owens:** I guess my intent is to ensure that somebody from the finance branch, because the member has been found in violation of the guidelines, is not going to go after the member or the caucus for reimbursement. The issue with the member for Kitchener-Wilmot is that he had to replace a sign at his own expense. So, yes, the sign was already up, the sign had already been paid for, but he still had to reimburse out of his own pocket. I would suggest that the cost of replacing one mailout for an individual will be quite onerous.

**Mrs Marland:** But he does not even want to—



**Mr B. Ward:** If I may interject, I think we are agreeing here. We recognize that the item that was sent to this committee was an honest mistake and we do not expect any action to be taken. Because it was sent to us, we reviewed the guideline and recommend that the guidelines remain in place for future reference.

**Mr H. O'Neil:** And we sort of self-police it. Again, as I think somebody mentioned, something could happen again. Something may go out that—

**Mrs Marland:** But I would be very clear; I do not want to see another calendar go out with it on. We are not going to say that individual now gets four householders because one was in error.

**Mr Owens:** No, that is not what I am saying.

**Mr B. Ward:** What we are saying is that we recognize it was an honest mistake.

**Mrs Marland:** That is fine.

**Mr B. Ward:** And that no action be taken because of it.

**Mrs Marland:** That is right.

**Mr B. Ward:** I think that is consensus.

**The Chair:** The other suggestion was to follow up with a letter to all members reminding them of the guidelines and the fact that these caucuses also police this issue.

**Mrs Marland:** I feel a little badly about the person who is having to replace the sign.

**Mr H. O'Neil:** What did it cost you?

**Mr Cooper:** It cost \$172.

**Mrs Marland:** Was it you?

**Mr Cooper:** Yes, it was me.

**Mr Morin:** How much?

**Mr Cooper:** It was \$172. I have no problem with that because I understand where it was coming from. It is the constituency office, and I am fully in favour of keeping the constituency office non-partisan. It was just a bit of an error trying to identify myself as provincial rather than federal for my constituents. But I have no problem with paying that.

**Mrs Marland:** I did not even make that announcement because I did not even know who it was.

**The Chair:** Does the Chair clearly understand the direction of the committee?

**Mrs Marland:** It is all in Hansard, thank goodness.

**Mrs MacKinnon:** Is my office sign in violation? It is white and orange.

**Mr Morin:** No.

**Mrs MacKinnon:** Well, somebody questioned the colour of that calendar.

**The Chair:** The Chair will send that letter to the Speaker and also send a letter to the members reminding them of the guidelines and of how the caucuses also police this particular area.

**Mrs Marland:** I just want to confirm the guidelines, Mr Chairman.

**Mr Owens:** Surely you have read them.

**The Chair:** Through the Chair, please.

**Mrs Marland:** I just want to confirm that we include those pertinent guidelines so they do not have to bother going to look them up.

**The Chair:** Yes. Any further comment on this issue? There being none, any further business before the committee?

**Mrs MacKinnon:** Mr Chairman, I am having a problem and I do not think I am alone in this place because I have heard others say the same thing. I do not, myself, like the products made by Pepsi. I prefer Coke products. You cannot get them in this building and I am wondering why, and what do we have to do to have them? It sounds minor, but at 3 or 4 in the afternoon when you are having a cold Coke caffeine fit, you need it.

**Mr H. O'Neil:** I am just the opposite. I will never drink a Coke.

**The Chair:** I will ask the clerk to get an answer on that question for you. There being no further business, this committee stands adjourned until 3:30 next Wednesday.

The committee adjourned at 1702.

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M-13 1991

M-13 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Wednesday 29 May 1991

## Journal des débats (Hansard)

Le mercredi 30 mai 1991

### Standing committee on the Legislative Assembly

Review of  
Freedom of Information and  
Protection of Privacy Act, 1987

### Comité permanent de l'Assemblée législative

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée



Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
Greffier : Douglas Arnott

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 29 May 1991

The committee met at 1537 in room 228.

### REVIEW OF FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

**The Chair:** I would like to call to order the standing committee on the Legislative Assembly.

### MINISTRY OF COMMUNITY AND SOCIAL SERVICES

**The Chair:** We have a group of witnesses today from the Ministry of Community and Social Services. Would they come forward at this time, please. I understood there were four.

**Mr Gooch:** There are other people from the Ministry of Community and Social Services present. If you would like, they can be publicly identified.

**The Chair:** Yes, please. Thank you for appearing here this afternoon. If you could all state your names and the positions you hold within the ministry.

**Mr Gooch:** My name is Peter Gooch. I am a policy analyst in the children's services branch at the Ministry of Community and Social Services. My responsibilities have to do with legislative policy largely concerning the Child and Family Services Act.

**Ms Koskie:** My name is Mary Pat Koskie. I am counsel in the legal branch.

**Ms Thompson:** My name is Sandra Thompson. As well, I am counsel in the legal services of the ministry.

**Ms Shilman:** I am Sora Shilman. I am a policy analyst in the FIPP unit of the ministry, which is the co-ordinating office for our ministry.

**The Chair:** You have as much time as you want to make your presentation here this afternoon.

**Mr Gooch:** I am hoping that members of the committee have a handout that was prepared for the committee concerning the interrelationship of the Child and Family Services Act as it applies to children's aid societies and the Freedom of Information and Protection of Privacy Act.

It is my understanding that the committee had heard at least one submission from a citizen expressing concern about the fact that the Freedom of Information and Protection of Privacy Act does not apply to children's aid societies and other agencies that are funded by the Ministry of Community and Social Services. What I would like to do is just take a brief amount of time to explain the current state of the law concerning records and confidentiality as it applies to MCSS agencies and then simply take whatever questions the committee has. Is that reasonable?

**The Chair:** Please proceed.

**Mr Gooch:** Okay. What you should know, just for background, is that the Child and Family Services Act is a very large statute. It governs a very broad range of interventions, in general terms interventions with children with special needs. The young offenders programs that the government runs for children aged 12 to 15 are governed by the Child and Family Services Act. Matters concerning adoption, children in need of protection, some children's mental health services are all governed by that statute.

All child protection services are governed by children's aid societies. Children's aid societies are agencies. They are not government, they are not-for-profit corporations with volunteer boards and as such they are not part of government, although they are very heavily regulated and controlled and their mandate is very clearly set out under the Child and Family Services Act. The current status of the law as it applies to records of children's aid societies is as follows.

Let me back up a bit and say that obviously the Ministry of Community and Social Services is governed by the Freedom of Information and Protection of Privacy Act. In those instances where there are services provided directly by the ministry, either schedule 1 agencies or other services like young offenders custody or detention facilities, wherever the ministry is running a facility, of course the Freedom of Information and Protection of Privacy Act applies.

It also applies to two agencies established under the Child and Family Services Act: the Child and Family Services Review Board and the Custody Review Board. The Child and Family Services Review Board is a quasi-judicial review body that reviews certain matters where decisions are made about children and the Custody Review Board also has a very limited role under the act to provide recommendations to service providers concerning decisions made about young offenders in custody or detention.

So where the ministry runs a facility or where there is a scheduled agency under the Child and Family Services Act, the Freedom of Information and Protection of Privacy Act applies. The Freedom of Information and Protection of Privacy Act does not apply to children's aid societies or the many other agencies which MCSS funds, whether non-profit corporations or in some cases for-profit service providers. Although they are governed by the Child and Family Services Act, they are not government per se, so the Freedom of Information and Protection of Privacy Act does not extend to them.

When this act was enacted in 1984 there was a part of the act, called part VIII, which concerns records and confidentiality, and the intention clearly was to bring all those service providers, that is, agencies that MCSS funds, into a protection-of-privacy and confidentiality scheme and to govern the way that service providers disclosed records or



provided access to information. Though the part was written into the law, it was never brought into force. When the act was proclaimed, it was proclaimed excepting the sections of the whole part VIII, which governs records and confidentiality, and it remains not in force.

**Mr H. O'Neil:** Why did that happen? What happened that they did not bring it in at that time?

**Mr Gooch:** I was not employed by the ministry at that time, so I cannot give you a definitive answer. What I have been told is that it was recognized in 1984 that part VIII as it was enacted was deficient. It was not an adequate scheme. It was known that there were flaws in it. Also, I believe, although I am not certain—some of you may well know much better than I do—the government at that time was considering its own freedom-of-information and protection-of-privacy legislation. Certainly by 1987 it was clear that that legislation was going to be brought into force and it was decided that we should look at part VIII and bring it into as close a consistency as was reasonable with the provincial statute before it was proclaimed.

A lot of effort was put into having an open and reasonable process to effect those changes, so in 1987 and 1988 the Ministry of Community and Social Services consulted extensively, mostly with service providers who would be directly affected by the proposed changes. We also of course had to take some time at the conclusion of that consultation to draft the proposed changes and go through cabinet approval. As a result, it took many years, but in June 1990 there was an amending bill to the Child and Family Services Act introduced by the previous government, very late in the spring sitting of the Legislature.

Part of the reason it took so long is because that amending bill addressed many other matters, many other provisions sprinkled throughout the Child and Family Services Act. It was a very extensive amending bill. But a good part of it, a significant part of that amending bill concerned part VIII and proposed some very particular changes to the scheme as it was enacted, as I said, to bring it as close as seemed to be reasonable then to the provincial statute.

As you are aware, with the rising of the Legislature the bill died and the present government has not yet introduced an amending bill to go forward with those amendments.

I am not sure if it is of interest to the committee, but what I could do is very briefly outline what kinds of provisions of part VIII now exist as they are enacted in the statute: Part VIII concerns the disclosure of records by service providers. Like the provincial statute, it permits disclosure on consent and it sets up some limited, specified exemptions when disclosure can be made without consent; it provides access to records. Children 12 and older can have access to their own records and parents can have access to any records which concern them, which are their own records, and they can also have access to records of their children; it permits service providers to deny access, again in limited, specified circumstances; it also sets up a process roughly analogous to the provincial statutes routes of appeal to the commissioner in that under the Child and Family Services Act, as it is enacted, the route of appeal

would be to the Child and Family Services Review Board, which I mentioned earlier.

In 1990, amendments were again proposed to bring part VIII into consistency with the provincial statute. One of the major changes that was proposed was that there would be provisions introduced regarding the collection of information. As part VIII now stands, there are no provisions, or very limited requirements, around the collection of information. We would have proposed changes that would have required collection of information directly from the person concerned, again with limited, specified exemptions.

It also would have introduced changes to make sure that children's aid societies could carry out an investigation of allegations or evidence or information about a child who was in need of protection or alleged to be in need of protection. There were amendments introduced that would make it clear that the limits on disclosure, the limits on collection and so forth would not impede that very central core function of the children's aid society to conduct an investigation about a child in need of protection.

There were also several—I hesitate to use the word “technical” because there are always issues of policy and legislative change, but there were some smaller changes introduced to bring part VIII into closer consistency. For example, though the present scheme would allow individuals to propose corrections to the records, there was nothing to allow individuals to attach a statement of disagreement to a record. The amendments would effect that sort of change.

The present Minister of Community and Social Services has not yet made a decision on whether to proceed with those amendments. It has not been a matter which has come before her as an issue of priority.

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**Mr H. O'Neil:** Just for my own information, in a case where some of the children's aid societies are dealing with sexual abuse, what happens now? In other words, no one, the parents or the children, would have access to those records?

**Mr Gooch:** The ministry has in place a policy. There is a manual called the Case Information Disclosure Policy Manual and it sets out the expectations of the ministry on service providers. It was widely distributed in 1985. Because part VIII was not being brought into force, it was felt that to fill that gap to some extent, there would be guidelines sent out. As I say, they were widely distributed, and it remains the ministry's policy.

What the guidelines say is very close in fact to what part VIII as enacted says. The ministry's policy is that children 12 and over, and parents, in the case you mentioned, should have access to their records, and service providers, the children's aid society, should not refuse to disclose a record unless there were some reason to believe that significant physical or emotional harm would come to the person who was receiving the access to their own record.

I would be misleading you if I left you with the impression that all service providers follow those guidelines. They are there as guidelines; they have no weight in law. Service providers do have a significant amount of discretion



to either follow the guidelines or not. There is not a uniform following of the guidelines across the province, so I suspect the children's aid societies may differ in the extent of access they grant to parents.

**Mr H. O'Neil:** They would sort of weigh on the side of keeping that information confidential as a protection to either the child or—

**Mr Gooch:** It really might depend on the policy of the particular children's aid society, but it is my understanding that many children's aid societies feel very strongly that the information they carry is very sensitive and possibly damaging, and in many cases they are reluctant to release records.

**Mr H. O'Neil:** You mentioned the age of 12. What happens under the age of 12?

**Mr Gooch:** If part VIII, as it is enacted right now, were brought into force, children under the age of 12 would not have a right of access to their records. Under the amendments, that remains the same. There was no proposal to—

**Mr H. O'Neil:** What about parents of those children under the age of 12?

**Mr Gooch:** They can have access as of right to their children's records. The only restrictions on that access are the very specific exemptions set out in the act, where harm might come to the person who is receiving access. Also, there are some restrictions about the release of psychiatric, medical or other kinds of assessment reports, where the service provider is not required to release those reports but would be required to provide the parents or the child, as the case may be, with the name of the person who conducted the assessment so they could follow up with that professional.

**Mr H. O'Neil:** In the particular case we heard, which was back in the fall, where this person was claiming it was hard to get information—I do not know whether you are familiar with this particular case that was brought before the committee?

**Mr Gooch:** I did read the transcript of the presentation.

**Mr H. O'Neil:** Could you comment at all on that particular case? Would you want to?

**Mr Gooch:** I do not have a clear enough recollection of the particular matters in that example to pretend to comment on it particularly. What I would say in general is that because children's aid societies and other agencies do have a fair amount of discretion, I have no reason to question that witness's experience. I have no reason to doubt that what she said she was given access to or denied access to is in any way wrong.

I am concerned that the committee understand that there is at least the intent to go forward with a very comprehensive scheme that would provide access and would remedy some of the very real concerns that witness brought to this committee.

**Mr Villeneuve:** I also think back at that case, and it was a very traumatic case. I believe this was a 14-year-old and it involved the parent's communication with children's aid. Children's aid stood in the way of communication and I think advised the young lady, who was having major problems at that time, what her rights were, and it contributed in a negative way to a very tragic situation as the

story unfolded. Is there any way when a 14-year-old has problems with a caring mother—hopefully there would be two parents—somehow or other to bring the two together, as opposed to seemingly wanting to split them? Do you have any jurisdiction over this? Are they autonomous? What is the score?

**Mr Gooch:** In general, the Child and Family Services Act strikes a very difficult balance between the autonomy and integrity of the family unit and some very specific procedural rights for children. I do not know how to give a more specific answer than that without talking about particular examples of interventions, where children do have some rights and they do not—with respect to Part VIII, again the legislative scheme that has been contemplated would give parents the right to see their children's records, and that would give them at least some opportunity to question the service providers' decisions and evaluations of the situation. There are many interventions or attitudes that service providers bring or particular decisions they make that are outside the reach of any statute.

**Mr Villeneuve:** What was happening here, I recollect, was that finally the mother did get information through freedom of information. Some of it was blacked out. A lot of it was someone's interpretation, someone's opinion. In the mother's opinion this was not accurate information at all, and this was after the child had died. She was just trying to straighten the record, and apparently there was no way this record could be correct, be it all too late.

These are alarming situations indeed, where common sense has to be used. We are dealing with individual scenarios, and there is no pat answer across the board. You have to deal with so-called professionals who really know what they are doing, but there are instances where a great deal is left to be desired, and I do not know how we, as a committee, based on your input and input from others, can come up with some sort of a broad spectrum to assist parents, to assist CAS.

It is a very difficult scenario. That was a case in my riding where I was dealing with a lady who had a very similar problem with a young lady about the same age. Luckily, we hope, things have turned for the better, but it has been a real fight for the mother. When this young lady winds up in hospital, she keeps being told—she is given her rights immediately—"You do not have to communicate with your mother." In this case we have very caring parents, but a difficult communication problem.

**Mr Gooch:** In response, I believe it was the intent of part VIII in providing access by parents to their children's records, to give them a way to challenge or correct deficiencies that they saw in the service providers' perceptions or decisions. I believe that was the intent of doing it there. Certainly it is ministry policy that parents should have those rights of access, as I have described.

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**Mr Villeneuve:** I think somewhere, somehow, there must be some exception made. Children definitely have rights, of course. Whenever the reading of their rights compounds an already serious problem, somehow or other seemingly you would be able to overlook this. When we



are dealing with the child who has major problems and all of a sudden he or she is being told, "You do not have to do this and you do not have to do that, you are on your own," it does not help.

**Mr H. O'Neil:** I have one other question. When you get into freedom of information and you get into opening up the records, whether it be to the child or to the parent or to someone else, there could always be the reluctance of the case worker wanting to put certain things down on that record that might be very important. Really, it is a contradiction saying maybe it should not be written down, but it is going to be made public. Would there be circumstances where there would be that reluctance and you might not have complete records? I wonder if you would like to comment on that.

**Mr Gooch:** Yes, there has been traditionally a very high level of concern by service providers about what open access to records would do to record-keeping. I believe that at the time of the amendment to the Mental Health Act, which provided an open access to clinical records, there were very grave concerns expressed by psychiatrists and other medical practitioners. It is my understanding that many service providers, in contrast to what you might expect—and the scenario you sketched is quite a reasonable one—what we are told is that service providers in fact find a contradictory result. They find that the records improve, because no longer can they simply state an opinion. If they write an opinion in a record, if they make an observation, if they propose an explanation, because they know the records will be accessible, they have to justify the positions they come to or they have to justify the observations they have made.

**Mr H. O'Neil:** Could there be a reluctance for them to write down certain things that would be important to the record?

**Mr Gooch:** I believe the proposed exemptions to access would address just that. If the service provider is reluctant to write something in the record because he or she believes that information would be very damaging or harmful or traumatic, there is a provision in the act. Again, if it were to be enforced, there is a provision in the legislation and under the amendments that would allow the service provider to withhold that record.

**Mr H. O'Neil:** Can you give me an example of that?

**Mr Gooch:** If a child were seeking access to a record and there was information on that record about the past

sexual history of the mother, for example, and if that information were not known to the child and the service provider is very concerned about its effect on the child, that information could either be severed or it could be withheld.

Now the child would have a right of appeal, just as you do under the provincial statute, and the Child and Family Services Review Board would have a way of looking at that record and hearing the service provider's concerns about release, hearing the child's or the parent's request for access to that information, and reaching a binding decision about whether to release it. So there are safeguards and checks and balances built into this scheme.

**Mr H. O'Neil:** If, as you say, this present legislation is sitting on the minister's desk, I guess it is for the committee maybe to have a look at how important that is, whether we should be pressing that it be brought forward and something be done with it right away.

**The Chair:** Any further questions? There are none. I thank you for coming along here this afternoon and making your presentation.

There were two other groups of witnesses scheduled to appear before the committee this afternoon. They actually had been scheduled over the last number of weeks. For a number of reasons, they could not make it this afternoon, so we will reschedule them for next week. They are from the Canadian Political Science Association and from the Stadium Corp of Ontario. They will be scheduled in next week.

We hope to have a subcommittee meeting next Wednesday at 8 o'clock in the dining room.

Is there any further business before the committee?

**Mr Villeneuve:** Wednesday morning?

**The Chair:** Wednesday morning at 8 o'clock.

Interjections.

**The Chair:** If there is something else scheduled for next Wednesday, then we will reschedule it maybe for Tuesday. We will check on that.

Any further business before the committee? Would the committee members just hold on for a minute after we adjourn the committee for a chat. Being no further business before the committee, the committee stands adjourned until next Wednesday at 3:30.

The committee adjourned at 1606.

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M-14 1991

M-14 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Wednesday 5 June 1991

## Journal des débats (Hansard)

Le mercredi 5 juin 1991



## Standing committee on the Legislative Assembly

Report of subcommittee

Review of  
Freedom of Information and  
Protection of Privacy Act, 1987

## Comité permanent de l'Assemblée législative

Rapport de sous-comité

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée

Chair: Noel Duignan  
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Président : Noel Duignan  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 5 June 1991

The committee met at 1602 in committee room 151.

### REPORT OF SUBCOMMITTEE

**The Chair:** Seeing a quorum, I call the standing committee on the Legislative Assembly to order. The first order of business is a report of the subcommittee meeting on Tuesday morning. I call on the clerk to give the report.

**Clerk of the Committee:** The subcommittee met to consider the committee's schedule of business and recommended that the committee consider presenting an interim report to the House with respect to its comprehensive review of the Freedom of Information and Protection of Privacy Act.

The subcommittee also recommended that the committee call as its last witnesses the Office of the Information and Privacy Commissioner to respond to presentations heard to date.

The subcommittee also recommended that a draft advertisement of the second phase of the committee's hearings be prepared and circulated to committee members for placement as soon as possible.

The subcommittee also recommended that, as it is required, the committee schedule the Clerk of the House and Sergeant at Arms to appear in the next week or two before the committee, and the subcommittee recommended that the committee request authorization for meeting time of two weeks during the summer adjournment, in addition to the week allotted for the subcommittee to travel to the National Conference of State Legislatures conference.

**Mr H. O'Neil:** Was that two weeks or just one week for the meetings in the summer?

**Clerk of the Committee:** I understood it was to be two weeks. One week for certain and one week if required.

**The Chair:** Any discussion on the report? Is there a motion to adopt the subcommittee report?

**Mrs MacKinnon:** I so move.

Motion agreed to.

### REVIEW OF FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

### STADIUM CORP OF ONTARIO LTD

**The Chair:** The next order of business is to continue the comprehensive review of the Freedom of Information and Protection of Privacy Act. I would ask the first witness from the Stadium Corp of Ontario to come forward at this time, please. Thank you for coming here this afternoon. Please state your name and the position you hold in the organization.

**Ms Novak:** Thank you for asking me. Good afternoon. My name is Lisa Novak. I am vice-president general

counsel of Stadium Corp of Ontario Ltd, which operates the SkyDome. As you know, a representative of the Stadium Corp has been requested to appear before you. Accordingly, I did not prepare any formal written submission to be made to the committee. What I thought I might do was outline generally for you the manner in which we have functioned under the act since its implementation, just to give you a bit of a picture of how it has applied to the stadium, and then I would be happy to answer any questions that anyone might have.

Basically, to date under the act the majority of the requests we have received have pertained to what I guess could be called a few specific categories or types of information. Before I came here, I did a review of our file history and the types of requests we have received. Essentially, and this is just a rough estimation, it appears that approximately 80% to 90% of our requests pertain to contractual information that we have with third parties we deal with in the course of our business. When you add to that the second-largest category of requests, which tends to pertain to board minutes, the two of those together appear to approximate 95% or more of the requests we have received. The balance of the requests generally pertain to things like details of financial arrangements that we have with third parties we deal with in business, financial projections and then another, miscellaneous category.

The types of information we would release on a straightforward basis—and I can give you some examples of the types of information that have been requested and released—are things like a list of board members, some of our French-language services information, evacuation plans for the stadium, certain job description information, lists of law suits, upcoming events, statistics on accidents and injuries and that kind of thing. By and large though, as I said, those types of information constitute a very, very small proportion of the information that is generally requested from us.

The other thing that is interesting to note about how the act has worked for us is that there are generally a small number of requesters who make repeat requests for the same types of information. Again, these tend to be in the contractual area. We tend not to receive broad ranges of requests or requests from a broad range of requesters.

That is just a general outline of how the act has applied to us to date.

What I thought I might do now is give you a bit of a view of the issues that arise for us in terms of processing a request that tend to result in appeals where there are appeals made of our requests.

The first, I think, is that there is a somewhat unique aspect to the SkyDome in that although we are a crown agency and we are an agency of the government through our shareholder the Ministry of Treasury, we operate very



much in a competitive manner with other private businesses or private entities in the marketplace. As a stadium, we compete with other stadiums and other venues for events and for stadium business, like Maple Leaf Gardens, the O'Keefe Centre, Roy Thomson Hall, stadiums in Buffalo and on an international basis as well.

By virtue of the fact that we are subject to the act, it can be said in a general sense that we are at somewhat of a competitive disadvantage to the extent that our business information is requested. Again, the major area where the issue arises tends to be because of the large number of requests pertaining to contractual information. As a general principle, to disclose our contractual information can put us at a competitive disadvantage.

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As you know, the act does contemplate certain exemptions for that type of situation. We have relied on those exemptions, because ultimately, as a crown agency owned by the government, we are accountable to the taxpayers. To the extent that we are uncompetitive or we lose the ability to compete or are unable to negotiate favourable terms in our business affairs, it directly affects the taxpayer as our shareholder.

I think the second factor that largely impacts our processing of requests is that almost invariably the types of requests for which a refusal is given and appealed deal with information that pertains to third parties. Again, the contracts are the main example.

As you also know, we are bound by the act to give third-party notices in that type of situation, and invariably third parties object to disclosure of contractual information. Understandably, it is sort of a natural response of private industry to react in that manner, because private businesses that are competing in the market place do not ordinarily disclose their contractual affairs, in order to maintain their competitiveness and their ability to negotiate favourable contractual terms in their business affairs.

The last thing I thought I might do is outline a few problems that we have experienced in complying with our obligations under the act, and I just put these to you in the hope that they might assist in your review of the act. Again, we have not made a formal review or a formal presentation or recommendations on how the act might be improved.

One is that, by and large, the exemptions that we find the need to rely on when they are applicable are the section 17 and section 18 exemptions, again pertaining to third parties' competitiveness and financial damage that may potentially result from a disclosure of the information. As you will also know, the commissioner has held that "clear and convincing evidence" is required to show the harms that are contemplated by those sections.

The difficulty we have experienced is that it is almost impossible to show clear and convincing evidence that an event may or is likely to occur when it has not actually occurred. We have now gotten to the point, I think, in our experience under the act that we do in fact have evidence, as a result of our experience under the act, indicating that we have suffered damage in certain cases. Particularly in the contractual area where party A has awareness of the

terms of party B's contracts, party A will try to negotiate similar favourable terms where those terms are favourable. Again, that can operate to the corporation's detriment.

I think that the requirement of clear and convincing evidence is a very stringent one, because it effectively results in having to acquire evidence of damage, of the harm having occurred in order to support your position or support the likelihood of a harm occurring again in a subsequent appeal.

We also now have the types of evidence that we could use to support what is contemplated under section 17 of the act as a likelihood that the information will no longer be supplied. We are now getting that kind of response from parties with whom we deal, that they are reluctant and are refusing to provide us with information that would assist in the operations of our business for concern that it might be disclosed.

There are other examples, such as interference with negotiations or inability to effectively carry out negotiations, again because of the third party's awareness that there could be disclosure. There are specific cases of that. However, the "clear and convincing evidence" criterion is a difficult one to satisfy.

The second problem we have experienced is in relation to the third-party provision. Again, virtually invariably the information requested of us does tend to relate to third parties. Under the act we are obligated to notify those third parties in order to permit them to make submissions. However, that can sometimes put us, or any institution for that matter, in a sort of catch-22 situation.

I have just prepared an example of how this can happen. This is something I have made up completely. It does not relate to any real incident, but it gives a sense of how this can occur. Let's say we were having a board meeting to discuss the issue of whether we wanted to sue party X for breach of an arrangement we had with party X, and we have an ongoing business relationship with party X. After some discussion at the board, and it is recorded in the minutes and so on, there is a decision made that in view of the long-standing relationship and the future business benefits and so on, a judgement call is made that, weighing the benefits of the likelihood of success in a lawsuit against other factors and benefits, we decide not to proceed with a lawsuit against party X.

If those minutes are then requested to be disclosed, we are put in a situation where party X has been discussed in the minutes and is therefore an affected party. However, we do not really want to notify party X that the information relating to it is that we were considering bringing a lawsuit against party X. It puts you in a very difficult situation in that the third party, which the institution is obliged to notify in order to obtain its representations, may in fact be one of the very parties you do not want the information disclosed to for good business reasons.

That example also reveals another problem we have experienced, that there have been a large number of requests for board minutes of the corporation. The problem this poses is that to some extent it hampers the board's ability to conduct and oversee the business of the corporation. I think that is ultimately to the detriment of the corporation and



therefore to the detriment of the taxpayers who are our shareholders.

It makes it difficult for management to go to the board for direction, for the board to feel that it has the ability to discuss openly the business issues affecting the corporation. Again, ultimately one wonders whether that type of a result is in the public interest or in the interest of the taxpayers.

In considering that and the problems I have just reviewed, it is important to bear in mind the purpose of the act. When one reads the stated purpose of the act, it refers to providing access to information under the control of institutions. To some extent, I think some of the background I have tried to give you reveals that a significant amount of the information we deal with is not necessarily information under our control. A large portion of it deals with the business affairs and activities of third parties.

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The principle of the act as stated is that information should be available to the public. I think that implies a public interest, and the act does not address this directly; it does address it in certain sections indirectly. I think something that is key in the implementation of the act is that it does, or it should, contemplate that the type of information that is desirable to be released to the public is information that is in the public interest in some fashion. I think that to some extent may get lost in the shuffle of processing requests, because the requester is not under any obligation to support the basis for his or her request or to make representations on why it is in the public interest that a record be released; or, in some other identifiable interest, the requester can simply make the request, can appeal it, and need not do anything further in terms of substance relating to the request. The onus is then put on the institution and the commissioner to determine whether the information should be released, based on the provisions of the act.

Interestingly, as I have tried to indicate, in our case a lot of the information that is requested is really not particularly in the public interest per se. In fact, I think what we find is that it is more in the public interest that the information not be released in order to enable us to compete effectively in the marketplace with the other venues we have to compete with.

I wonder what public interest is served in disclosing our lease with the little shop in the hotel or our contract with last week's promoter of such-and-so concert, when the detriment that can arise from that is that the competitors of that promoter or of other prospective tenants at the stadium can see that this party got such-and-so terms, "and therefore I want the same beneficial terms, not these other terms."

There is a certain common sense, I guess obviousness, to the proposition that people like to keep their contractual terms to some extent under their hat in business, in order to be able to carry on their business in the most effective manner. Unfortunately, the irony is that if the requesters would ultimately see the types of things they are asking for, they probably would not find them as exciting as they might think they are, because by and large they just relate to our business terms.

The last potential problem I thought I would bring to your attention is that there are developing out in the marketplace information services businesses, if you will, that provide a service to clients of obtaining information from various institutions under the act, which makes sense and is perfectly acceptable, but there is an issue that arises in that it may not be clear, either to the commissioner or to the institution, who is the real person who is requesting the information.

The problem that poses is twofold: One is in relation to what I was outlining earlier, in that there may be some validity to requiring the requester to show a reason for obtaining the information, whether it is the public interest or some other interest that can be balanced against applicable exemptions or reasons of the institution for not releasing it.

The second is that, depending on why the requester is requesting the information, it could constitute a premature disclosure of documents that may be relevant to a piece of litigation, which is somewhat of a concern that has arisen with us in relation to certain requests that have related to ongoing litigation we are involved in. Of course there is no way of determining whether this is the case or not at present, but if people were to use the information provisions of the act to obtain, effectively, discovery of documents outside a legal process, it can, I think, prejudice the institution in protecting its interests in that litigation in the manner that one is entitled to rely on traditionally at law as due process in litigation. Unfortunately, because the requester does not need to identify himself or herself or the reason or rationale for the request of information, it puts the institution in the position where it cannot be argued that the exemption relating to deprivation of due process is applicable because it cannot be said whether or not the information is going to be used or may be used in that manner.

Those are just a few specific and I suppose somewhat miscellaneous issues that I thought I would put to you that we at least have come across in our experience with the act.

To summarize, there is a definite appeal to the concept that there is a public interest in the disclosure of government information. However, it needs to be balanced against the exemptions in the act. The act also contemplates that there are legitimate exemptions that are applicable, and in the particular case of the stadium, because our function as a crown agency is somewhat removed from government per se, oftentimes there are legitimate exemptions that are applicable.

The other point is that the issue of the public interest should perhaps play a greater role in the determination of whether or not information should be released.

That is all I thought I would say today. I am happy to answer any questions anyone might have.

**Mr H. O'Neil:** I am just trying to think of one of the previous presentations we had. It may have been even in the fall. Who was the chap who came before the committee who was complaining about some information he had asked for and he did not receive?

**The Chair:** That was Ken Rubin.



**Mr H. O'Neil:** Do you recall the request that he may have made? I guess he has made a few that were turned down. Maybe we could just touch on that.

**Ms Novak:** I do not know specifically what requests he might have been referring to unfortunately. We have received a large number of requests from Ken Rubin over the years. Many of them we have responded to and there have been releases of information either immediately or through the mediation process. Others have gone to appeal. Unfortunately, I cannot really identify what specifically he might have been referring to, but again, due to the sort of breakdown of the types of requests that I tried to give at the start of the presentation, it is more than likely that the requests would have pertained to a contractual type of information or information where third parties were involved and that process was gone through and so on.

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**Mr H. O'Neil:** Mr Villeneuve just reminds me that the ones he brought to our attention were dealing with some of the concessions within the building, like the food concession. You would place that again in contractual agreements, where it could be of harm for—

**Ms Novak:** I do not know the specifics of what the request would have said but it sounds like it would have been a request for contractual information with the concessionaire or that affects the concessionaire, which is of course a third-party, private entity.

**Mr H. O'Neil:** I guess what people who are looking for concessions within a building such as the Dome are wanting to make sure of is that other people who have applied are treated fairly and that they are getting the best deal possible for the province, for the Dome and for the people of Ontario. How would you put safeguards on something like that?

**Ms Novak:** To ensure that the best deal with the concessionaire has been made?

**Mr H. O'Neil:** That there is no sweetheart deal between board members or somebody who has had it for a number of years. I go back to my experience as the Minister of Tourism and Recreation in dealing with Ontario Place and some of the concessions there, concessions that may have been given that should not have been given and were not examined closely enough. There was not enough of an open bid process, you know, trying to correct some of those things. So when you were dealing with these bids that were put in, you got the best pricewise and yet that looked after service and other things too that had to be taken into account.

**Ms Novak:** I think for better or for worse the way that process has been structured is that a corporation has been set up that is a schedule 2 crown agency of the province, and the province has retained or arranged for a management team that it feels is qualified to negotiate the best deal and the most appropriate deal based on market terms and so on and so forth. I do not think this act is intended to be a mechanism to review whether or not that process worked effectively, and in fact the request of a contract post facto that is in place is not going to be able to serve

any interest in examining the process to make sure it worked effectively, because the deed has been done at that point.

I think that is part of a broader issue of whether management is operating effectively and in accordance with its duties. It seems to me either that is something that should be addressed at the stage when you are setting up the structure and giving the people or the body the authority to act in the interests of the shareholder, as a corporation does, or that can be addressed by means of some kind of inquiry into how the process operated. If that is something that is desired by the government or by some authorized public body—but you know, a private individual requesting a copy of the contract, it does not appear to me to serve that sort of function.

I think at that point there are other factors that outweigh whatever benefit—I guess I find it difficult to see where the public benefit is in seeing the contract that has been signed via a public individual, who is not necessarily acting on behalf of the public interest.

**Mr H. O'Neil:** You mean if they act on behalf of the public interest or whether they represent the board. I mean, they are responsible. The management team should be responsible to the corporation itself and, in turn, the corporation to the province or whoever is running it.

**Ms Novak:** Absolutely.

**Mr H. O'Neil:** I can see that, by releasing certain information like that—but I think there also have to be some safeguards built in. In these particular requests that were made, the management team would have to be responsible to the corporation. Does the corporation review those contracts, along with the management people too?

**Ms Novak:** I am sorry? Does the corporation review?

**Mr H. O'Neil:** In other words, you were saying you have a management team that would approve a contract, accept a contract. Do all those contracts go to the board?

**Ms Novak:** It depends on the nature of the contract. Because the Stadium Corp of Ontario Ltd is a corporation set up under the Business Corporations Act and is also a schedule 2 crown agency, there are certain guidelines, procedures, legal obligations that are similar to most corporations. Then there are additional types of procedures for accountability to the government by virtue of our arrangements with the government and our authority as a schedule 2 crown agency.

I am just saying that generally there are procedures in place designed to achieve the objective you have pointed out which is that, because the taxpayers are essentially our shareholders, you want the best things done for the corporation that are in the interest of the taxpayers. It is those mechanisms that address that issue rather than this act per se.

**Mr Villeneuve:** Ms Novak, could you explain to us or maybe walk us through quickly—I presume most of the requests under freedom of information to the stadium corporation would involve a third party.

**Ms Novak:** That is right. A large number of them do.

**Mr Villeneuve:** Yes, the vast majority. Could you walk us through who receives it? Who decides, “Is it



within my mandate to provide this information?" Do you have a group of people that sit down at some particular point soon after? Just what happens when you receive a request under freedom of information for the beer concession, the food concession or whatever? Give us an idea how you handle that.

**Ms Novak:** We have two individuals in our legal department, myself and an associate counsel. I will give you what the current structure is because it is modified a little bit over time. Currently the associate counsel deals with the requests. Our vice-president of finance is the decision-making head effectively under the act, the designated FOI co-ordinator. He works with our associate counsel to process the requests. Generally, depending on the nature of the request, usually because it relates to contractual information, the legal department is immediately familiar with the type of information being requested and can locate it and deal with the request appropriately in accordance with the act.

Where it is a type of information maybe not immediately available to the legal department per se, the request will be distributed among senior management at the corporation with the request that members of the department conduct their own search of their records to advise us of what materials they may have that respond to the request. That is then gathered and reviewed and the associate counsel will make a determination in consultation with me and with the FOI co-ordinator as to the appropriate way to respond to the request based on the procedure in the act.

**Mr Villeneuve:** Would the third party involved ever be contacted at any point?

**Ms Novak:** Oh, yes. That is one of the early things that is done, to determine whether there are any affected third parties. Then, of course, the procedure is to notify the third parties and permit them an opportunity to make representations to us on whether—

**Mr Villeneuve:** Do they know who is doing the inquiring or who is the individual? I would think that probably an agent would be acting on behalf of a competitor so they may not be in a position to know if it is a competing beer company, food concession or whatever. Are they privy to that information as to who is requesting?

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**Ms Novak:** No, we do not notify the third parties of who the requester is. We notify them that a request has been made. This is the wording of the request: we tell them what the request is and we tell them what records we have identified that are responsive to the request. Depending on the bulk of those records or whether the third party would be immediately familiar with them, we may attach copies or we may simply identify the category, and there might be some verbal discussion afterwards as to what they might need to see in order to respond.

**Mr Villeneuve:** What type of document is provided? Do you provide, say, a copy of the contract with absolutely blacked-out areas of those particular items within that contract that are not deemed to be public or to be published to whomever, or does someone print a résumé? Just

how does the information go out to a potential freedom-of-information request?

**Ms Novak:** Do you mean to the third party?

**Mr Villeneuve:** No, to the person who has requested. I presume the third party has had knowledge. You are saying they would be made aware. Would their negative reaction be considered by your board? Would they have a lot of input into whether their deal is made public or not? I am quite sure that input would be forthcoming from them, likely in a negative fashion, that the less said about this, the better. That would be a normal reaction, I think. You then have to decide, how much further do we go? What format do we provide the individual who has requested that information?

**Ms Novak:** It really depends on the record in issue and the nature of the response of the third party. Generally, it is not an issue of whether there are big secrets to hide. It is sort of a question of principle and competitiveness, the terms under which the agreement was negotiated, and so on. But not always, I should caution. There have been some things that have been released that are of a contractual nature. I think what you might be referring to is whether there are any severances made. When it comes to a contractual issue, our view is usually that the whole contract is confidential. It does not make sense really to disclose these six contractual provisions but not those twelve. It is really part and parcel of the whole applicable exemption.

**Mr Villeneuve:** Would you suggest then in most cases that the contract itself is kept confidential and you would broadly outline to the requester the general terms but nothing specific?

**Ms Novak:** It depends on what our decision was. If we had made a decision to refuse access, then we would simply give our decision in accordance with the act. We have developed a binder of forms that we use in accordance with the act, in compliance with the sections governing how a notice is to be issued, and so on. It depends really on what the decision is. If the decision were to disclose parts of it, then we would disclose and we would simply state that we are not disclosing these other provisions for such-and-so reasons, and we would set out the reasons in accordance with the act.

**Mr Villeneuve:** Does that create a major headache for you? First of all, do you get a lot of requests under the same corporation?

**Ms Novak:** Without question—and this is actually one comment towards the end of my presentation that I did not make—there is a tremendous expense and investment of manpower in dealing with the act. It is a huge undertaking, and some of the requests we have received are tremendously broad and very expensive.

Actually, one of the points I was going to make—I will do it now as it has come up—is in connection with the cost provisions under the act. Understandably, there are requesters who object to the cost provisions and do not think they are fair and so on. We think the cost provisions serve a very valuable and legitimate purpose under the act.

There are two aspects to that. One is that the cost provisions are not onerous; they really permit a nominal recovery



against the costs incurred by the institution in processing requests, and I think that is fair and reasonable. Second, I think they are a bit of a disincentive to fishing expeditions or frivolous requests; not to suggest all requests, or even a majority of requests, are of that nature, but some of the requests we get could amount to hundreds or thousands of man-hours of plowing through files for things, and the cost mechanism is a helpful mechanism to deal with the requester in such a way that we can say: "In order to process this, it is likely going to cost you X. Maybe if we had a better understanding, or if you could narrow your request or identify specifically what it is you are interested in, it would save you some money and I guess save us some money."

I think that is an important and legitimate concern, because the act is designed to serve a public interest, and I think it is important to recognize that doing that is not inexpensive and that therefore you want to make sure the public interest is being served and people are really focusing on what they really want, to reduce costs. I think I digressed a little from exactly what it was you were asking.

**Mr Villeneuve:** My final question you can answer or pass. In your opinion, do you feel the freedom-of-information act is too permissive? Do you feel there should be more restrictions? What is your candid observation?

**Ms Novak:** It is hard to say. I can only comment on our own experience with the act, and there are so many different, varied institutions subject to the act that it is hard to really say whether it is serving requesters' objectives in a broad sense or whether it is too permissive or too restrictive on that kind of level.

This is my personal opinion, as opposed to any opinion of the corporation, but from my experience with it, I think it is not that it is necessarily too restrictive or permissive per se, but that perhaps the rationale for requesting is not appropriately recognized—that is the public interest thing I was talking about earlier—and that some of the exemptions do not necessarily contemplate in the best way the good reasons there might be for withholding information.

It is difficult to draft an act in such a way that it is going to contemplate every situation that might arise, but I think there needs to be a little more flexibility in allowance for judgement to be exercised, because information can vary as much as people can vary on the face of the earth, and it is difficult to apply fixed parameters that are going to work the right way every time. It really is to some extent a bit of a judgement call.

Of course, that may sound a little unfair to requesters, and they probably do not want somebody out there exercising that kind of judgement in a free sense, but because of the heavy amount of procedure involved in the act I think people sometimes might actually get more information if there were not an act in place, in that I think sometimes the procedure and the processing and fitting within the parameters of the act can work in a somewhat restrictive sense. I am not sure there is any answer to that or any clean solutions.

**Mr Villeneuve:** The stadium corporation is not quite unique but almost unique, and so being, maybe has to have

a slightly different set of circumstances or rules when you are dealing with it. I appreciate that and I really appreciate your candid remarks. Thank you.

**The Chair:** I thank the witness for coming this afternoon and for a good presentation and questions very well answered. Thank you very much.

**Mr H. O'Neil:** I was going to ask one additional question. With some of these food contracts you are negotiating, do you see any cheaper hot dogs down the way?

**Ms Novak:** I would love to answer that one, but I do not think I should.

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#### CANADIAN POLITICAL SCIENCE ASSOCIATION

**The Chair:** Could I ask the next set of witnesses from the Canadian Political Science Association to step forward, please. Thank you for coming here this afternoon. Could you state your names and the position you hold within the organization, please.

**Mr Whitaker:** I am Reg Whitaker from York University, representing the Canadian Political Science Association.

**Mr Russell:** I am Peter Russell, president of the Canadian Political Science Association until yesterday when I finished my term. I was president when we filed this. We serve one-year terms. My successor, Professor Vincent Lemieux at Laval University, could not be here. I am the immediate past president.

**The Chair:** Do you have a presentation to make?

**Mr Whitaker:** Yes. There was a brief some time ago actually, when we were initially scheduled to present, which turned out not to be possible at that time. I am chair of the archives committee of the association, so perhaps I could say a few things that come out of the brief.

The concern we have as political scientists is that there be reasonable access to government documents, particularly for the purpose of being able to undertake research and analysis of public policy. There is in fact a very considerable public interest, we believe, to be served by research into public policy in a democratic society, making the citizens better informed so that they can make better judgements as to how they should be governed.

Unfortunately, the Freedom of Information and Protection of Privacy Act here in Ontario appears to be working in a way which is in fact impeding this process. While we are very aware of the conflicting objectives that have to be balanced, the conflict between the public interest to be served by disclosure of information and sometimes the public interest to be served by protecting information, and also the legitimate protection of information regarding the privacy of individuals, we believe that in certain ways, from our point of view as researchers, the balance has shifted rather too far in the direction of restrictions.

This committee has the opportunity, in reviewing this legislation, to recommend some changes—I will now move to our recommendations in this regard—that could in fact restore some balance to this. We are not asking for absolutely unrestricted access to everything, far from it, but we do think there is a reasonable balance and that balance is not being struck at the moment.



I might add that to somebody like myself who has done some fairly extensive research using the federal Access to Information Act, and in ongoing research that I continue to do using that act, the situation in Ottawa is in fact much more open and much more amenable to the kind of research that we are doing. We really doubt that the government of Ontario intended to be more restrictive than the federal government. I think it is probably more the unintended consequences of legislation which, once put in place, works in a certain way, and in this case, from our point of view, not particularly well.

The problems particularly centre around the Archives of Ontario, which is the repository for what you might call non-operational government records when they are no longer being used by governments and then are deposited in the archives. That is the major place where people would be going to do significant research. The problems are many, but I will focus on particular ones that can be addressed.

First of all, there is the problem of financial resources, that the freedom-of-information act was imposed upon the Archives of Ontario. It imposes an enormous amount of work on that institution, but in fact it has not been given additional staff resources to handle that. The result is, inevitably, that there are enormously long delays which are extremely irritating to the users of the archives but in fact are also an embarrassment to the archives' staff themselves. If our recommendations and some of the other recommendations were to be adopted, I think that would ease the financial problem of having to provide additional resources, but additional resources would certainly be required in any event.

A second set of problems arises surrounding historical records. The act does not distinguish between current operational records and those which are no longer operational and should become part of the historical archival record. The act provides for discretionary exemptions, with no necessary time limits. There should be, we believe—and here we are following the federal legislation—injury tests applied to such exemptions.

If there are strict time limits imposed—and we would argue for 10 years on cabinet documents, which would normally span the life of two and a half governments; 10 years on most other exemptions, with some exclusions for law enforcement and so on where there is a reasonable case to be made for a longer period—the government would then have to demonstrate that harm would be done to the public interest by disclosure of a document more than a decade old. This would balance the public's right to know with a necessary degree of confidentiality to maintain the functioning of government.

Another problem is enforceability. The freedom-of-information act is not enforceable on government ministries and agencies in terms of preserving the records of government documents. I believe this suggests that there should be changes made to the Archives Act, which is in fact very old in this province. It should be brought up to date in terms of the provisions of the freedom-of-information act and the Ontario archivist should be given teeth, in effect, to insist upon consultation in the disposal of non-operational

records. Again, this is the federal practice, and without this, significant parts of the historical record of the Ontario government may be lost, either inadvertently or perhaps even in some cases deliberately by ministries or agencies destroying significant records.

Another point that we suggest, and I believe that historians have made the same argument before this committee much earlier, is that we would like to see built into the act provisions for research agreements between researchers and the Archives of Ontario regarding access to records. The problem at present is that when someone launches on a research project, you start off and you do not really know exactly what it is you want to see. You have to survey the documents in order to find out what you want. But you cannot do that now without having everything run through the act, which means that there is eight months' to a year's delay often in actually getting initial access to even begin research.

1700

We would suggest that you might have provision in the act for research agreements which would have exit clauses rather than entrance clauses; that is, they would deal with the terms on which material could be published rather than on the terms on which researchers could view the records. We think that for proper safeguards, this should be made enforceable; that is, there could be an amendment to the act whereby communication to an unauthorized person of information exempt under the Freedom of Information and Protection of Privacy Act which is obtained under a research agreement would become an offence under provincial law.

In other words, this would be something researchers would enter into. They would agree that they would only publish what was acceptable under the act. There would be some teeth in that to make sure that did in fact happen.

Another set of problems revolves around the issue of privacy. The protection of privacy usually turns out to be the biggest barrier to access to information for researchers. While there are valid reasons for protecting the privacy of individuals, I think there is a good deal of abuse of this in effect by the kind of expansive way in which this is interpreted.

There are some changes that could make this situation better: first of all, time limits. The act indicates that personal information does not include information about an individual who has been dead for more than 30 years. You can get access to material that deals with an individual, but only after that person has been dead for 30 years. The American freedom-of-information law provides no after-death extension of privacy protection. It assumes that when somebody is dead, his rights to privacy do not extend beyond the grave.

It is not at all clear to us why such a right ought to extend beyond the grave or why an arbitrary period of 30 years, and we would recommend that the legislation be amended to strike out any reference to the protection of the privacy of individuals no longer living. That would solve a great number of problems in access to information.

Clauses 2(1)(e) and 2(1)(f) in the definitions of "personal information" in the act indicate that the personal opinions or views of an individual are included in the definition of protected personal information. The way the act



is written, if I may just refer to it, it refers to, for example, "correspondence sent to an institution"—that is, a government institution—"by the individual that is implicitly or explicitly of a private or confidential nature, and replies to that correspondence that would reveal the contents of the original correspondence."

I think this is drawn up in such a broad way that it effectively limits access to opinions on public policy that are provided to government, and researchers should be free to discuss and analyse such opinions and attribute them to identifiable persons where the analyses of opinions offered to government on public policy matters are an essential part of the research. We recommend that this definition be changed so as to allow researchers unrestricted access to individual views advanced to government on public policy. In conclusion, it is the consensus of researchers who have used both the federal Access to Information Act and the Ontario freedom-of-information act that the federal legislation, despite many flaws, is superior to the Ontario legislation from the point of view of reasonable access to public information for purposes of research and scholarship. We doubt that the government of Ontario intended to be more restrictive, and we would hope that this committee could take the opportunity afforded at this time to recommend changes such as we have suggested to amend the legislation to eliminate this rather invidious comparison with the federal government and hope that a somewhat more appropriate balance could be struck between the genuine rights to the protection of privacy and the public interest on the one hand and the stake of a democratic community in facilitating research into public policy on the other.

**The Chair:** Thank you very much. The floor is now open to questions.

**Mr Villeneuve:** Professor, you have quite obviously used freedom of information for some period of time. I am sure you obtained information prior to the legislation.

**Mr Whitaker:** Yes.

**Mr Villeneuve:** Your opinion before and after.

**Mr Whitaker:** I can speak here actually more appropriately at the federal level, but I think it is in some ways similar. It is kind of six of one and half a dozen of another. Before the federal legislation came into effect, I was able to obtain information that I would not now be able to obtain. In fact, I published an article in a scholarly journal back in 1984 which contained quite a bit of information that I know I could not now get those documents under the Access to Information Act.

On the other hand, I would on balance say it is a good thing to have this regulated by legislation, which in effect suggests that there is a right of access to information, or freedom of information, and puts the onus on the government to justify why information is not provided. I think that is a healthier situation than the earlier situation, when it was perhaps just by chance that one might get access, or indeed that one might be favoured, that a government agency or ministry might like this kind of researcher and think that he is going to say something or write something that is approving, so they favour him and give him docu-

ments they do not give to somebody else. Under legislation, it is put on a more appropriate basis of a right that is universal and not particular; so I think on balance it is good, although I grant that in some cases it has been more restrictive.

**Mr Villeneuve:** So we are basically, in your opinion, dealing with the protection of privacy, as opposed to a freedom-of-information legislation, if I read you correctly.

**Mr Whitaker:** I guess our concern, from the point of view of political scientists, is that the protection of privacy, as it has been interpreted, tends to be a very significant barrier to access to information. That class of exemption is the one that is most often cited by governments, and this is the case in Ontario as well, in justifying not releasing information, that the release of the information would be an invasion of the privacy of third parties or whatever. That is almost ubiquitous. It seems to be constantly in the process.

One of the reasons we had for suggesting this notion of research agreements would be that it is a way of getting around that problem, because in fact often the researchers are not interested. I know myself I have often run into this, and my reaction is to say: "I don't want these names. I'm not interested in these individual names." They may mean nothing to me. What I am interested in is the picture that I can draw, looking at a number of individual cases of how, say, a government policy is actually being implemented, and I can only do that by looking at the documents, but they may be identified by individual names of people. But I am not interested in the names.

If we could have these kinds of research agreements, in effect it would be possible to draw the research implications out of this, but you would be restricted from releasing any of those names, and I think that is a reasonable balance. It protects the privacy of the individual while at the same time allowing access for research purposes.

**Mr Villeneuve:** In many instances, though, would the names, even if they are unwritten, not be obvious?

1710

**Mr Whitaker:** Yes, they may be, and indeed often there is no other way of accessing the information except via the names of individuals.

I will give you a concrete example of some research I have done which has to do with immigration policy. In order to understand how immigration policies are really operating in reality, as opposed to the letter of the law, you often just have to work through cases. Again, as a researcher I am not interested in those individuals and I am not going to run off and tell the Toronto Sun that so-and-so got let into the country and had a dubious past or anything like that; I just want to get the picture. I cannot do that under the present circumstances, and with the kind of research agreements we were suggesting, that would perhaps, for example in this case, allow access to those kinds of records, with a clear and enforceable understanding that none of that private information could be divulged, but only information that did not relate to the privacy of individuals.

**Mr Villeneuve:** One final question, and it follows along the same lines of identifying: 30 years for information on an individual, you feel, is totally out of line. Possibly the day



after death is a little too soon. Could you come up with a middle-of-the-road time frame? Should there not be a time limit, based on your experience of the American method of operating? I would still like to see a five-year span or period of time whereby there would be a cooling off.

**Mr Whitaker:** First of all, it would not be the day after somebody died, because even if we requested it the day after somebody died, it would take a while before it actually worked its way through, from experience, anyway.

I guess our concern is that 30 years is an awfully long time. I mean, we are talking now, for example, about—

**Mr Villeneuve:** Mackenzie King.

**Mr Whitaker:** He would be outside that. We are talking about 30 years, which is 1961, somebody who died that long ago. I personally find it very difficult to understand how a right in effect extends beyond the grave. If it were anything that reflected on immediate family or something like that, then presumably those individuals could claim protection of privacy in their own name to prevent that information being divulged.

**Mr Villeneuve:** The last statement brings on another question. How can I protect information? Is there a way now, in your opinion, that one can protect privacy by stating your case? It sounds like I could request protection if one of my immediate predecessors passed away and there was something that I wanted to protect. Can you do that?

**Mr Whitaker:** I am not sure I could answer that in the abstract. I guess if there was information that was being held on that person in the Ontario government that mentioned your in some way, then indeed that would relate to you and that information would be protected because you are still living, and indeed now would be protected until 30 years after your death.

**Mr Cooper:** Mr Whitaker, you seem to be pointing out that the pendulum has swung too far to the privacy section. Our question that I think we have been asking with the other people who have presented is, do we have to redo the whole legislation or would guidelines serve the purpose just as well?

**Mr Whitaker:** I think there are some changes that should be made to the legislation. I cited in particular those sections of the definitions that seem to imply, for example, that representations made to government on matters of public policy which are made confidentially would fall under the protection of privacy. I find that to stretch the reasonable definition of protection of privacy to the breaking point.

It seems to me that if somebody makes representations to government, to a minister, whatever, on a matter of public policy, that should be part of the public record. Certainly it makes research very difficult. If one were trying to do research on policy, one would want to know what kinds of representations had been made, by whom, which were successful and which were not and so on. It seems to me that is in the public realm. That is one.

The other one is this extension of privacy 30 years past death, which is a really difficult problem. That is in the legislation, and we would like to see it changed.

**Mr Mills:** I have a question that touches on what Mr Villeneuve said about waiving the 30-year rule. If somebody passes away and you say the next of kin likewise can apply for the protection of privacy, I am just wondering, if someone is seeking information about an individual, what mechanism is in place that would let the next of kin know this is being looked into in order to protect himself if he wanted to?

**Mr Whitaker:** This is up to the particular ministry or agency of government that receives the request, to process it according to the act. Indeed, this is one of the difficulties that is presented to the Archives of Ontario, the difficulty of knowing. Has somebody been dead for 30 years? Are they dead or are they alive? I make many requests of the Canadian Security Intelligence Service in Ottawa, and I have had them come back to me and say, "We don't know if this individual"—who they had files on—"is dead." I have my suspicions about that, but in some cases perhaps even they do not know. This is a very difficult problem administratively to handle. That is still a problem even if you were to waive the 30-year rule, but at least it simplifies matters rather.

**Mr Frankford:** I think I am correct that birth and death registration and certification is protected as privacy?

**Mr Whitaker:** I do not know.

**Mr Frankford:** I think that is the case, because we had a presentation from the genealogists. It surprised me. It seemed to me this really is a matter of public record. Do you have any comments on this?

**Mr Whitaker:** I can see why the genealogists would be upset about it; that is their business. It does seem very strange. I know there has been a great deal of social science research of an historical nature that has been based almost entirely on that kind of information, in terms of getting historical profiles of the size of families, the age at which people have children and all sorts of information of that kind which is very valuable from a social science point of view. That, I must admit, was not one I had been aware of, but having been made aware of it, I deplore it as much as the others.

**The Chair:** I wish to thank Mr Russell and Mr Whitaker for coming here this afternoon and giving a good presentation. Thank you both for coming.

**Mr Russell:** I wonder if I could just leave with you these words on behalf of the political scientists I represent, just two points.

It is becoming a matter of real concern with them that they are not able to do the research that is important in political science; that is both the faculty in departments of political science and, equally important, their students who are doing their theses. Some of the points in the document to look at are the ones that hold them up. A student is only at university to do a thesis for a finite period of time, and only has financing for a finite period of time. When that doctoral student doing research on public policy in Ontario is held up for a year waiting for the documentation, he or she is very seriously handicapped. So this is of grave concern to us in this province, and we are most concerned that



the situation is now rather worse than it is in researching federal public policy.

The second point related to that is, this is not just a matter of what is convenient for our researchers. This is a matter of the public interest. We think our work is part of the process of making government accountable; not immediately, as members of the Legislature do, but in the longer term. Writing scholarly works, articles and books on how public policy evolved in Ontario is part of the accountability process that we think we serve. So I do urge on you that

Professor Whitaker's brief on behalf of our association be given full and due consideration by the committee.

**The Chair:** Thank you, Professor, for making a good point here this afternoon. I am sure the committee members will take those points in its deliberations of this act.

Any further business before the committee? Seeing none, this committee stands adjourned until 3:30 on Wednesday the 12th.

The committee adjourned at 1722.

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M-15 1991

M-15 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Wednesday 12 June 1991

## Journal des débats (Hansard)

Le mercredi 12 juin 1991



## Standing committee on the Legislative Assembly

Semiannual review:  
Clerk of the House

Members' services

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 12 June 1991

The committee met at 1541 in room 228.

### SEMIANNUAL REVIEW: CLERK OF THE HOUSE

**The Chair:** I would like to call to order the standing committee on the Legislative Assembly. The first item of business before the committee today is the semiannual report from the Clerk of the House. Welcome again.

**Clerk of the House:** I apologize for being late. No one ever knows when one gets out of that place, but it is a pleasure to be here again. I am afraid I do not have anything in the way of a formal report except to say that the general administration and procedural happenings in the House are, I think, moving ahead at a normal pace. There are many things that are being addressed by the members, by the Board of Internal Economy and by the administration, hopefully meeting our main concerns that those undertakings have the earmark of answering the needs of the members of this institution.

Therefore, in that vein, I would be willing to answer any questions you might have. What I am asking you to do is to point me in the right direction, because I can inform you about a lot of subjects but I would rather hear what is basically close to your preoccupations.

**The Chair:** I was just wondering if, for the benefit of the committee members, you could outline some of the issues that are before the Board of Internal Economy to give us an idea of what has happened.

**Clerk of the House:** The Board of Internal Economy had a main go at the estimates. It took most of the winter meetings and that was finished. There is no main thrust to those estimates in new programs or anything except, probably, one program that you are probably well aware of. That is the program to start on the renovations and maintenance of this place. There is not yet money towards that program, because that is still in the hands of the special committee on the parliamentary precinct, but there is money there for general maintenance. That is the sort of base we are building on.

The other preoccupations of the board right now are mainly to do with, I guess—I wish I had brought back agendas—something this committee might want to lend a hand with. This might be termed as an appeal from the Clerk. The board is taken up a lot with budgets from committees. Maybe it would be time for this committee to address that and to want to look at the way budgets are prepared for the operation of standing committees in the House and how they are controlled.

They are controlled in various different ways in different Parliaments. I think there are ways to improve the system here to a great extent, and maybe this committee could be a factor in that. If you did need any help and documentation or

anything, I and my officials would surely be happy to furnish you with information in that field.

**Mrs Marland:** I would be happy to move a motion, if it was required, that we receive information from you about how other jurisdictions handle committee budgets. I have no idea what alternatives there are and I think it would be to the advantage of the entire House if there is anything we are doing that we could do better by learning about alternatives. I think that would be an excellent subject for our committee to deal with, because obviously in the long run it would be of benefit to all members, not just those members on the board who labour eternally with those responsibilities currently in the format.

You referred to the fact that there has been money appropriated for the general maintenance of this building. I know that all of us, both as members of this committee and in our caucuses, are part of the ongoing discussion about the future of this building and how we can phase it and how much we should do this year and next year. I have been struggling with that myself. I really think it is time that we stopped spending all of the time we are on that subject and make one decision, and that decision is whether or not this building is going to continue to be the seat of government in this province; and if we decide that it is, then the other decisions are made.

That sounds very simplistic but, as far as I am concerned, it is common sense. We are all waffling about whether it is \$60 million or \$80 million or whatever it is and if we do this and we do not do that and maybe we will get this part that the public sees improved and we can continue to hide a mess, as we do. As those of us who have now toured this building have seen at first hand, we hide the rest of the mess. It is not only the fact that it is just hidden but some of it is relative to the functional aspects of this building. It is very critical.

Frankly, I need some guidance as to how we can stop the wrangling and the discussion that I have been part of for the six years I have been here. I do not want to be here another 10 years and still be discussing it. In the meantime, the longer we discuss when, how much and where this building—while we do that, the cost goes up every year. Now if we decide, as the current members of the Legislature, that we might as well go up to Highways 401 and 400 and get into an industrial complex up there and build a new provincial seat of government for \$30 million or \$40 million, then that is the decision.

We know what the choices are. We either do what in my opinion is the obvious thing, which is that we stay here and preserve this beautiful building that is now part of our history and indeed our heritage in Ontario, or we do something else. The only comparison that I can make based on my own experience is that the city of Mississauga, with a population at the time of 350,000 people, spent \$60 million on a



new city hall. We are talking about a population in Ontario of 10 million people and we are waffling about whether we should spend \$60 million on the—I cannot say city hall but the house of government for the entire province.

1550

When the city of Mississauga spent \$60 million on its new civic centre five years ago, it had never had a civic centre. It was not a matter that they were renovating or building for the sake of building. They had been a city at that point since 1974 and they had never had a civic centre. They spent \$60 million for that population, which was quite acceptable to those taxpayers because of the way it was done.

I think it is time that our committee made a strong recommendation about what we do about this magnificent building that is deteriorating as we sit here. Those comments are relative to the Clerk's comments, because of what he just told us about the maintenance budget that the Board of Internal Economy has approved, but I am sure that with his responsibility and the responsibility of our next guest this afternoon, the executive director—I really am very frustrated by the futility of what is going on surrounding this obvious decision. I mean, if we cannot spend what is necessary to preserve what we have for 10 million people in this province as the seat of government, then there is something totally wrong.

**The Chair:** Maybe I can impart some good news to Margaret. In fact, hopefully in the last week of this session, the special committee on the parliamentary precinct will be presenting its report to the House. What we are trying to arrange with the three House leaders at this point is for a one-hour debate where we can discuss this report and have it approved by the members of the Legislature.

**Mr Morin:** A debate in the House?

**The Chair:** Yes.

**Mrs Marland:** And have it all over with in one session?

**The Chair:** Yes. We have done a final draft. It is waiting for approval by the committee on Thursday morning, and hopefully we will be in a position to present it some time in the last week of this session.

**Mrs Marland:** Great. I hope I live that long. Is it two weeks?

**The Chair:** Two weeks. It addresses those issues that you have raised, it has recommendations and hopefully the recommendations will be adopted unanimously by all members of the Legislature.

**Mrs Marland:** Oh, great.

**Mr Mills:** If you had told Margaret that before, she would have stayed in bed.

**Mrs Marland:** You would not have had to listen to me.

**The Chair:** Dianne, did you have a question?

**Ms Poole:** Yes. I am actually an alien on this committee, just visiting for the day, but I did have some comments and a question about what the Clerk referred to earlier, and that is committee budgets and how they are drawn up and approved. It is an issue that I feel very strongly about and have for a number of years.

Right now there appear to be no guidelines. We have very experienced clerks who help draw up committee budgets from precedent, but the process is badly flawed. My perception of how it has worked from the years I have been on committees is that a committee will decide its order of business and what it wishes to pursue. The clerk will then draw up a budget including travel arrangements and per diem rates, whatever is required, based on that decision of the committee. The Chair and the clerk then go to the Board of Internal Economy with this budget, normally waiting anywhere from an hour to two hours, sitting outside with a lot of other committee chairs and clerks. At some stage you get called in to defend your budget. You speak and then you leave. Then arbitrarily, on whatever whim happens to cross the mind at the time, the Board of Internal Economy comes down with its decision, and it can be to slash your budget. Reasons are not given. The committee Chair is just notified that this request is denied or, "Your budget has been reduced by this much." It really calls into question the autonomy of a committee to order its own business.

What is the point of having this façade of going through and saying, "We as a committee decide that this is the business we think is urgent and must be accomplished," if the Board of Internal Economy can then say: "That's well and good. You can do it if you want to, but we're not going to give you any money"?

It is not as though a committee can spend money in other ways. If there is money not utilized in the budget for the purpose for which it is given, it devolves back to the Legislative Assembly. It does not carry over; the committee cannot use it for something else.

I think the whole process needs revisiting and we need guidelines put forward by the Board of Internal Economy. I am fed up with wasting my time and other members' time deciding what our order of business is and then not being able to complete it. Right now the public accounts committee is about to go to war over that particular issue, and we feel quite strongly about it.

**The Chair:** Again, the member may be pleased to know that this committee will be reviewing how the committee structure works in this place, hopefully beginning in the fall when we come back. Certainly the suggestions made by the Clerk of the House here today will be taken into consideration by this committee when we review how the structure works.

**Mr Mills:** Have you got any more tricks up your sleeve, Margaret?

**Mrs Marland:** Do you have anything to do with the Legislative Assembly decisions about equipment for members' offices? That is not in your jurisdiction, I guess.

**Clerk of the House:** Not really. Mainly that comes down to recommendations that go to the Board of Internal Economy, and the Board of Internal Economy would decide on those things. But if you have anything, we can certainly put them into the system if you want.

**Mrs Marland:** Do you sit as a member of the board?

**Clerk of the House:** No, I am an adviser to the board.

**Mrs Marland:** Then I am just wondering, in your position as an adviser to the board, whether you might also



wear your hat as a common citizen of the province. I wonder if constituency offices of members in the year 1991 might be as up to date and well equipped as the average business in the province by having a computer terminal in each office that was on line to their offices in Queen's Park.

As I say, it is unfortunate that we have to apologize for the fact that we do not have something as simple as that today, and the cost of them has come down so much in the last six years that I have been asking for it. I know every time I have asked for it, every member has agreed it is something they really need. I know sometimes in the past the caucuses individually have wrestled with it, but it always comes down to the fact that the approval has to come from the board. I really think if we went to people outside this building, they would be surprised to know we do not have them.

**The Chair:** Again, Margaret, the Board of Internal Economy has in fact approved a computer for each constituency office, with a printer and a fax machine.

**Mrs Marland:** They have?

**The Chair:** That information should have been passed on by your House leader, or whoever deals with the Board of Internal Economy.

**Mrs Marland:** And when do we get them?

**The Chair:** As of 1 April of this year. It is actually paid for by the legislative fund, not out of the constituency fund.

**Mrs Marland:** How many do they pay for in our Queen's Park office?

**The Chair:** I am not too sure. Maybe we can find out and answer that question for you. But I know the board has approved one for the constituency office, with a printer and a fax machine.

I know the Clerk has another appointment at 4 o'clock. If members have other questions, the Clerk is willing to come back after his appointment and deal with those questions at that time.

**Clerk of the House:** Oh, definitely. Why do I not just drop in after my appointment, then?

**The Chair:** Yes. I think our next group here has something they would like you to see as well, in relation to a new bell system for the House.

**Mr Morin:** Is the bell system in response to your point of order in the House?

**The Chair:** It is coincidental. It is amazing it happened like that.

**Clerk of the House:** This has been in the works for quite a while. Before we change anything, it is important we get the opinion of the members.

1600

#### MEMBERS' SERVICES

**The Chair:** Thank you. I would like to welcome Barbara and Paul from members' services. I believe you have something to show us here this afternoon.

**Mrs Speakman:** Yes. I guess this resulted from two things: one a little longer-term issue, and one a shorter term. The longer-term issue was that last year we had a lot

of problems with the sound of the ringing of the bells over a long period of time. At that time, the previous Speaker, the Honourable Hugh Edighoffer, had asked us to look at the possibility of changing to chimes. We had decided, when the standing orders were changed, that perhaps we could just work that into the renovation of the building when we did the electrical system. So although the concept was there, we did not actually go ahead and do it.

The more immediate thing that came up, of course, was when Gary Malkowski was elected and he, not only for himself but on behalf of all deaf and hearing-impaired people, indicated to us that there was a requirement for a signal to those people that the bells were ringing. We then had to deal with the problem of bringing in some kind of flashing light, something that would alert both Mr Malkowski and anyone else in the building who required that service that the bells were ringing.

Paul took that and looked at the two concepts and has worked with Mr Malkowski's office and Mr Malkowski himself on a number of trials of different things. He has finally come up with this particular one he is very comfortable with. Because it changes a tradition—it is not really the light that is the problem; we are changing a tradition from a ringing of bells to a chime—we wanted to make sure we brought this here, that you hear it, see it, either like it, do not like it or have some suggestions for us on ways it can be improved.

I hand it over to Paul to demonstrate. I should warn you that the last version of this he had, he set his hands on fire. This is the battery pack. The battery pack was wrongly wired. He assures me that this time the battery pack is correctly wired, but I am going to move aside.

**Mr Tranquada:** I should explain this model is a working model. This is not the final version, but it is the working version. We have some refinements to make. I will turn the sound off first of all.

I think the first requirement was to make the signal visible without being annoying, because they are two different requirements. The fire alarm system should be annoying because you want people to do something. For this kind of sessional bell which is used daily, it is more of an alerting device, as you said, in the tradition of calling the members into the House.

This chime is roughly the sound we are looking for, but we will want to tune it to make it louder for some locations. In some locations, like a committee room, we may just choose to put a light rather than a bell so that if you are in a committee room and the lights are flashing, then it is obvious what is happening; you do not need to have sound.

This will not just benefit people who are hard of hearing or deaf. It will also benefit other users in the building. It certainly would relax a lot of our visitors who, when they hear the sessional bells every day, start running for the exits.

Mr Malkowski's staff has seen the lights, and Mr Malkowski has seen it himself and is quite certain this will meet the requirements. It means we have to put more coverage throughout the building so we will have more of these devices.



**Mrs Speakman:** The design we were looking for also had to be fairly sympathetic to the design of the building. We did not want something ugly or too large or whatever. And also the shape—we wanted it to be seen along a corridor and not just seen if you were looking straight on. This was really the best design we could come up with at this point. I guess I will leave it open now to you, if you have any questions or comments.

**The Chair:** Also advise the other members of the committee that Paul is the manager of the renovation and restoration program of this place, and he is our heritage adviser to the precinct committee. As most members well know, his firm is the one which has come up with the plans to restore this particular place.

**Mr Frankford:** Is this something you designed?

**Mr Tranquada:** Actually, this is a stock fixture, but the components are off the shelf. They are a lot of little things sitting in this box. I should add, too, that in view of our desire to make this building fully accessible this is well in keeping with the trend to not only look at people with mobility problems but to look at people with sight problems and hearing problems. At the end of it, hopefully, we will achieve all of these objectives.

The next step is the fire alarm system which, though it is not a committee concern, is a technical concern to put lights in the building that are sensitive, that achieve the purpose and do not destroy the look of the building.

**Mrs Marland:** The fire alarm system, Paul, is a committee concern. I am concerned about the fact that in my six years I have never taken part in a fire alarm exercise.

**Mrs Speakman:** We have had them.

**Mrs Marland:** I know, but when the House is sitting I am seldom not here. I am here when the House is sitting, and it has to be more than a coincidence that in six years I have not been part of a fire alarm—that is off this subject.

Has this challenge been tendered out to companies to come up with alternatives and ideas?

**Mr Tranquada:** That is our next step. We have a performance specification that goes with this. What we have been doing for the last few months is looking at trends and at what other people have done. We have looked at the House of Commons. It has an electronic system that works on a loudspeaker system, but they do not use lights in the same manner; they just use a sound system. We have specifications put together now and we are going to put it out to the marketplace and get a—

**Mrs Marland:** So you are saying the federal House does not have a system for people who cannot hear.

**Mr Tranquada:** No.

**Mrs Speakman:** Just as prototypes we looked at various options like strobe lights, for example, which are very aggravating—

**Mrs Marland:** And they are expensive.

**Mrs Speakman:** We looked at a number of different designs as prototypes and ran them by Mr Malkowski and also ran them by our heritage adviser, Julian Smith, and looked at how things would fit in with the building. This was the result of all of that, which again is still only a test

box. We would then put that out, tender specifications, and get bids. There might be a much better refined product at the end of it, but this is the concept we wanted to run by this committee.

**Mrs Marland:** I support the need and I support the concept of doing it. I am certainly glad you got away from strobe lights because they are ghastly for everybody. I am just wondering, if we are going to this much trouble, if have been tendered out to firms that do this kind of thing, who have the design ability, because it would be nice—that is very institutional looking.

**Mrs Speakman:** That is just to let you see the kind of thing, that was all.

**Mrs Marland:** Yes. It is going to cost something. Using that as an example, there is a cost to putting the coat of arms on the globe. I would rather spend money on the design of the fixture itself, that it looked more traditional and less like something out of a washroom.

**Mrs Speakman:** That is true.

**Mr Tranquada:** That is a good point.

**Mrs Speakman:** That is really what we would do. This is just to let you see the concept.

**Mrs Marland:** So you are going to say: “This is what we need. These are the purposes it must serve, and there’s a ballpark about how much we can invest in this,” and come back to us—

**Mrs Speakman:** And it must fit in with the heritage aspect of the building and all of those things.

**Mrs Marland:** You may end up with some very interesting designs, then.

**Mr Mills:** I like that chime that goes boing, boing, boing.

**Mr Tranquada:** I think we are going to ask for a system where you can tune the signal.

**The Chair:** I wonder if the member can face the microphone.

**Mr Mills:** I was just making that off-the-cuff remark. I did not think I was up.

**Mrs Marland:** You are on record.

**Mr Mills:** I know that, but I did not think I was in the rotation here. That is what I was frightened of. It just dawned on me that was a nice sound.

**Mr Owens:** I would just like to gently disagree with my colleague from Mississauga South. I quite like that design. It has a nice antique look to it, and in terms of matching a decor we still have around this place, I think it is kind of a nice design. Whether it reminds one of a washroom or not, I think it is appropriate to have the provincial crest on it.

**Mrs Marland:** An antique; that is because he is younger than I am.

**Mr Tranquada:** I think if the committee would like to see the final model, that would be the best way to handle that. As far as the fixture itself goes, this was the best fixture we found without designing a fixture just for a model, but we are going to be purchasing quite a large number of these things and of course there is a volume

discount when you make a cast, and you can amortize that, so I am sure we can find something that not only does the functional part.

**Mr Morin:** I think the concept is excellent myself as far as the shape is concerned, and I leave that up to the taste of Mr Tranquada, who is already on the renovation and restoration program. I am sure it is going to be done well. The main thing is to give you the go-ahead, and I think you have the go-ahead from us.

**The Chair:** Unanimous consent? Carried.

Agreed to.

**The Chair:** The Speaker is not due until 4:30, along with the Sergeant at Arms, so I will recess the committee until 4:30.

**Mr Morin:** Can I just make a remark? It is so refreshing to come to a committee and see members so calm.

The committee recessed at 1613.

1633

**The Chair:** I would like to reconvene. Before we ask the Speaker and the Sergeant at Arms to report to us in camera, I would like to draw the committee's attention to two reports they will find on their desks, dealing with the Freedom of Information and Protection of Privacy Act. The commission will be coming forward to present its select recommendations to us next week. All the witnesses to this point have appeared before the committee and we are in the position to begin to do an interim report to the House. We hopefully will begin that process next week after the appearance of the commission, so I would urge the members to review those two documents, which will be the basis of the discussions next week.

I would also like to draw to members' attention two letters, again dealing with the television system within the House and some requests we have. They will be appearing next week as well. Any questions?

**Mrs Marland:** Yes. Next week, when the commission is before us, would that be an appropriate time to ask about

the exemptions of government agencies, boards and commissions from the act? Are they the people I should ask about that?

**The Chair:** I would expect so.

**Mrs Marland:** What do you think, Lewis?

**Mr Yeager:** It would not hurt to try.

**Mrs Marland:** They are only appointed with the existing mandate, really.

**Mr Yeager:** That is right.

**Mrs Marland:** My difficulty is that I now realize we have some very serious exemptions to the act and I do not know who it is we as a committee can ask about why those exemptions exist and if we might agree that they should not.

**The Chair:** Maybe we could ask the clerk to investigate that, and if we can find the appropriate people, ask them to come along next week.

**Mr Owens:** I think Frank White might be the most valuable resource in that respect. He is the director of the FOI and privacy for Management Board. He has testified here before.

**The Chair:** Maybe we will ask the clerk to find information, and if he can locate the individual—

**Mrs Marland:** Or individuals.

**The Chair:** —or organization, ask them to come along next week.

**Mrs Marland:** That would be excellent. Thank you.

**The Chair:** Any further questions?

**Mrs Marland:** Are we going to share the letters, or are we going to wait for those until next week?

**The Chair:** That is next week. At this point we would like to go in camera.

The committee continued in camera at 1637.



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## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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Mills, Gordon (Durham East NDP) for Mrs Mathysen  
Poole, Dianne (Eglinton L) for Mr H. O'Neil

**Clerk:** Arnott, Douglas

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M-16 1991

M-16 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 19 June 1991

### Standing committee on the Legislative Assembly

Broadcast and recording service

Office of the information and  
privacy commissioner



Chair: Noel Duignan  
Clerk: Douglas Arnott

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mercredi 19 juin 1991

### Comité permanent de l'Assemblée législative

Service de télédiffusion et  
d'enregistrement

Bureau du commissaire à  
l'information et à la protection  
de la vie privée

Président : Noel Duignan  
Greffier : Douglas Arnott





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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 19 June 1991

The committee met at 1539 in room 228.

### BROADCAST AND RECORDING SERVICE

**The Chair:** I would like to call the standing committee on the Legislative Assembly to order and ask Bill Somerville if he would step forward, please.

**Mr H. O'Neil:** There is no question of this. We are going to approve it anyway, are we not?

**Mr Mills:** Why do we not put the question?

**Mr Somerville:** I will answer a few questions if the members have any. I can just briefly say that the Legislative Assembly reaches a satellite transponder—transponder is another word for transmitter—24 hours a day, 365 days of the year. On occasion we have had applications before this committee to rent or lease the additional space we do not use.

Over the years this committee has developed guidelines and regulations, and I think you have a copy of those before you. The first application to use the transponder is from Wawatay Native Communications Society, which has been a long-time customer, using the transponder. They have been sharing the transponder access for the last three years. We have enjoyed giving them that. I think the committee has approved every application that has come before it for Wawatay.

This new application is for another use, of an audio subcarrier. On the satellite we have one video subcarrier and five audio subcarriers. We use two of the audio, one for English and one for French, and we do not use three. The application from Wawatay is to use one of the unused subcarriers.

**The Chair:** What is the reason for the application?

**Mr Somerville:** The process is that any applicant has to go through this routine of writing to me. Then I look at the pros and cons and see if they meet the guidelines and then inform the committee of such, and also inform TVOntario, which does our uplinking, and then we report to the committee. Then the committee considers these applications and approves or disapproves.

**Mrs Marland:** Bill, what you are saying is that these are channels that are not needed or not used?

**Mr Somerville:** These are three audio channels that we do not use at the moment.

**Mrs Marland:** So this will take two of three that we do not use?

**Mr Somerville:** It will take one of the three we do not use. That is the Wawatay application.

**Mrs Marland:** What is with the muscular dystrophy one?

**Mr Somerville:** The muscular dystrophy one is another application that is before us to use the video uplink

on occasions when the Parliament does not plan to sit, which would be the Labour Day weekend.

**The Chair:** Sorry to interrupt here. Maybe just to clarify things, should we deal with one application at a time?

**Mrs Marland:** Yes, if they are separate. It would be nice to do that.

**Mr Somerville:** They are two separate applications.

**Mrs Marland:** Do we get paid for this?

**Mr Somerville:** No. We have never charged any fees for use of the satellite transponder.

**Mrs Marland:** Is it for a set time and then it is reviewed in case some other groups want a turn?

**Mr Somerville:** In each of the previous applications we have always kept a clause saying we can rescind this approval at any time. If the Parliament decides to sit or have committee meetings, then we could take the space back and use it.

**Mrs Marland:** Right. What if Parliament does not decide it needs to use it, but that it would be fair to give it to another group for a period?

**Mr Somerville:** It would be this committee's decision to do that.

**Mrs Marland:** How many channels are available totally?

**Mr Somerville:** We have one video channel that we use and five audio channels. We use the one video and two audio channels. There are three audio channels not used. We have never used them in all the time we have used the transponder.

**Mrs Marland:** This will leave two free?

**Mr Somerville:** Yes.

**Mrs Marland:** I think it is excellent that somebody is interested in using them. Especially when they are there and they exist, they should be used. But I think in fairness it should not be ad infinitum or for ever. I think it should be written in such a way that it is reviewed periodically in case all three spare channels are being used and there is a lineup of other people. Perhaps it could be written in such a way that if other requests that meet the criteria come along, we have the flexibility to give everyone a turn and then revert to the bottom of the list again; just to have that flexibility. Otherwise I would move approval if you need it.

**Mr H. O'Neil:** I had quite a bit of experience in the very short while I was Minister of Culture and Communications and on some of the other trips up north. I think it might help Bill if we were to have Lawrence Martin come forward and explain part of why it is so good that the native people can make use of this channel. Maybe Lawrence could give the committee some insight on some of the things the channel is used for.



**Mrs Marland:** That is fine. Let's do that, but do not misinterpret what I am saying.

**Mr H. O'Neil:** I am not interpreting.

**Mrs Marland:** I do not need to be convinced of the good purpose and the good use it will be put to. I am simply saying that at some time in the future we may have some other groups that may want the same opportunity and this group may be waiting. I think, in fairness to everybody, we should be good managers of a facility that is going to be put to good use by whomever.

**Mr H. O'Neil:** Margaret, I am not disagreeing with you. I am not questioning what you are saying whatsoever. I am just saying that there are many new members on this committee who may not be—

**The Speaker:** Order, please. I would just like to remind members that we are a very civil committee and if we could direct our comments through the Chair, it would be very helpful.

**Mr H. O'Neil:** I am sorry, Mr Chair, but I just want to be polite to Margaret too. If we could have Lawrence come forward, others, maybe Margaret and myself or the new members of the committee, might like to hear what it is they are doing with that channel, the great work they are doing in the north.

**The Chair:** Let's move on and hear Lawrence.

**Mr Mills:** I think the justice committee is a much more tough and rigid sort of place to be. I am not used to this.

**The Chair:** We have managed to survive for about a year.

**Mrs Marland:** We are good friends here.

**The Chair:** We have actually become good friends on this committee and we have managed to achieve a number of things in this committee that other committees have not. I would love to keep it that way.

**The Chair:** You are the executive director of the Wawatay Native Communications Society?

**Mr Martin:** Yes, that is right.

**The Chair:** Perhaps you want to explain to the committee a little bit about your application.

**Mr Martin:** Thank you very much for allowing me this time to come down here. It has been a long trip from Sioux Lookout. As Hugh O'Neil was saying, the uses we have for the technology in the north are very important, especially in the north because we do not have anything much up there. In terms of television programs, the only channel we have is TVOntario in the northern communities, and some places have the CBC, so you are talking about an area that does not have what you have here.

We have been running distance education courses, high school courses, on our present system, our audio system on a radio network. We want to expand that so that we have a dedicated audio subcarrier just for distance education for high school courses for the native communities in northern Ontario. So far this year we have done that with our existing radio system and we have over 400 students in 18 communities. We are just slowly expanding that.

The courses are province-approved high school courses. It also includes native language courses for Cree and Ojibway. This is basically the reason for it, so that we have a distance education system in place that can be utilized by the people in the north.

**Mr Mills:** I was just reading over your letter and there was what Margaret was saying, that we should build in some mechanism whereby it is not cast in stone, but I see here that you need to know the commitment that we make, because it is going to cost you quite a lot of money to make it all work. Without some sort of mechanism to ensure and guarantee or enshrine your future with this satellite, you would not be prepared to make that expenditure. Would that be correct?

**Mr Martin:** I do not think we would be able to. We just would not be able to afford something like that. Just to run the system at the community level is very expensive and to have staff able to do it is very expensive. Not to bring up many different issues, last year we were cut severely by the federal government in the funding for communications. We lost a third of our operations, a third of our staff, and now we are trying to do something at the same level we were doing before, so it has been pretty difficult to do things like that.

However, with this kind of system, we are working together with existing resources. This is how I like to look at it. It is a system that says, "Let's work together developing something that does some work for everybody."

1550

**Mr Mills:** You would be looking for a sort of a guarantee that you would not go to the bottom of the list at some later date. You really would like to see this sort of cast in stone, if I may coin a phrase. Is that what you are after?

**Mr Martin:** Yes, most certainly, because we are talking about an education system and I would not want to see our students get cut off for any reason. It is nice to be fair, but education is a priority, especially in areas where you do not have much of anything else.

**Mr Mills:** Do your programs permit someone to gain some sort of certificate of education?

**Mr Martin:** Yes, these are high school courses.

**Mr Mills:** You can go right through?

**Mr Martin:** Yes.

**Mr Mills:** And without this, they would not be able to because of the distance getting to schools?

**Mr Martin:** Yes, and also, native education in the province as a whole has been really poor, especially in northern communities where we have a dropout rate of about 80% to 90%. So this is a way of being able to get the education into the communities, as opposed to trying to bring the kids out.

**Mrs Marland:** I appreciate what you have just said in answer to Gord's questions. If TVO were to expand its service network and its programming down the road which would save you doing the program you do, could you see another use you would have? In other words, if there were an agreement that you could use that channel for five years, and after that something else has been offered that



replaces what you have to provide because it is not provided at the moment, would you see an alternative use that you might have, or would you see it being realistic to look at it five years from now and see where TVO is and where you are?

**Mr Martin:** I think it is important to look at what is there now and what could be there in five years' time. I know for sure that the schools are utilizing TVOntario courses as part of their everyday systems in the schools, in the communities. So they are utilizing TVOntario to the fullest extent they can. What we are providing high schools with, nobody else is providing at this time. If TVO or somebody else were to start looking at that, maybe that is something that can be looked at in the future. But right now, it is not there and education is really poor, as I say. Somebody has to do it and we are in a position to do it and you guys are in a position to provide that service.

**Mrs Marland:** Which I agree is excellent. I am simply suggesting that perhaps we should look at talking about it and reviewing the situation five years from now.

**Mr Martin:** Perhaps. It is good to review it anyway because of the changes in technology. You might be able to apply something even better five years from now.

**Mrs Marland:** Right, that is what I would suggest.

**Mr Frankford:** Could you elaborate a bit? Is there a school board or are there school boards or are you the only—

**Mr Martin:** Wawatay Native Communications Society has been around since 1974, providing communications services in the Cree and Ojibway languages. It is just this past year that we formed a partnership with the Northern Native Education Council. They are the ones who have the private school status to be able to offer high school courses, so we work as a partnership to provide this service to the people up north. Wawatay itself does not hold the private school status per se. Our distance education department is called Wahsa. Wahsa means far away, like sending stuff out far away. So they are the ones able to provide certificates and we hold the CRTC broadcasting licences.

**Mr Frankford:** What is that agency?

**Mr Martin:** Wahsa?

**Mr Frankford:** Yes.

**Mr Martin:** They are the Northern Native Education Council. They are responsible for all the education systems within 23 bands, and in this past year they formed this Wahsa, which is another program of theirs. But Wahsa only works on distance education material.

**Mr Mills:** I just thought of another question. In my riding there is the First Nations of Scugog, and I have spoken with them on occasion and they talk about education and language, opportunity to teach their own language. My question is, can you pick up the signal in southern Ontario with a normal TV, or do you have to have some elaborate satellite dish?

**Mr Martin:** You can pick it up with not so much an elaborate satellite dish, but it can be done technically, so people from around the province can be picking it up. As a matter of fact, when we do our TV programming on the only channel now, which is on Saturday at 1 to 2 and then Sunday

from 6 to 7, we sometimes have contests on our TV program just to see where people are listening. We have callers from London, Ontario, from Oshawa, from Kingston, from Toronto. So people are watching the programs that we do from up there, and this past February we were visited by Bill here with the select committee and we did a live broadcast from Sioux Lookout, which we helped them to put together. So whatever we do up there, it gets viewed right across the province.

**The Chair:** Any further questions of the committee? Do we announce consent of the request? Carried.

**Mr Martin:** Thank you very much. Meegwetch.

**Mr Somerville:** I wondered if I should raise the technical question. If you wanted to receive this audio, you would not pick it up on TV. It is not the audio that goes with the TV signal. It is separate, like a radio station coming off the satellite. It is a very small dish. It is like they are broadcasting school radio programs in the purest sense.

**Mr Mills:** I see, thanks.

**Mr H. O'Neil:** But the TV part of it broadcast on the Saturday can be picked up, Bill?

**Mr Somerville:** Oh, yes. The committee previous to this approved, over the years, the use by Wawatay of the video portion of our satellite transponder for one hour on a Saturday and one hour on a Sunday. On other occasions we have given them extra time, up to six hours.

**Mr Martin:** Can I make one last comment? The TENO program—television extension to northern Ontario—is still not in the northern communities, so people are very anxious to see what you guys do here every day. But hopefully this summer it will be installed and give a glimpse of what goes on.

**Mr Mills:** They might become less than anxious.

**Mr Martin:** But right now they are anxious.

**Mrs Marland:** I do not think I would waste a channel on that.

**The Chair:** Thank you, Lawrence, for appearing here this afternoon.

**Mr Somerville:** The other application you have before you for the transponder is for the video and audio portion. This is the portion that normally beams up the Parliament. The application, as you see, is for the muscular dystrophy and we have a spokesman for the society here.

**Ms Mullin:** Would you like me to give you a brief run-down on what we are here for? As many of you are aware, the Muscular Dystrophy Association of Canada relies on the Jerry Lewis Labour Day Telethon for a large portion of our revenue every year. We do separate broadcasts in each province, and in the province of Ontario we have relied on the Global TV network for approximately the last 14 years to carry the telethon.

We have been informed this year that Global will not be carrying the telethon for us. We were made aware of this earlier this year and we have made numerous attempts to set up a network across the province to carry the show. Global reaches approximately 80% of the province, so anything smaller we set up, we are already eroding our base.



The telethon accounts for about 25% of the revenue that is raised in Ontario, over \$1 million. It takes place from Sunday evening, this year 1 September to 2 September at 6:30 pm, which is Labour Day Monday. Hopefully most of you will not be in here on that day.

What we are looking for is support from the Legislative Assembly in order to allow us to broadcast the signal over the parliamentary channel so that anybody who is a cable subscriber will be able to pick up the telethon. We are still negotiating with a number of community channels to set up a broadcast on their community programming channels. Unfortunately, we are dealing with about six main companies and then each of their local operators, and it is very difficult to set up this system around the province. We are running into snags and we are running short of time.

People are used to finding the telethon on Global. In order to let them know where it is, we have to start promoting it now and let them know they have to change the channel. We would like to be able to give them something to change to and right now we are not able to do that, and that is why I am here today, to ask for your support on Labour Day weekend.

1600

**Mrs Marland:** You certainly have my support, 100%. Is Global even willing to advertise that you are going to be on another channel for you?

**Ms Mullin:** They have agreed to help us promote the telethon. We have not, at this point, had anything to promote, so we have not negotiated with them what that will entail. But they have agreed that they would help us promote. My sense of that would be, obviously, some public-service time on their channel.

**Mrs Marland:** Bill, what is on this channel when we are not on, in August, for example?

**Mr Somerville:** Normally we have just information saying when the next parliamentary sitting will be and the proceedings. Come that weekend, I believe there will not be much happening. I think we are off the following week, so we would be just saying Parliament resumes on the day after the break, which would be 19 September, I believe.

**Mrs Marland:** So we could start promoting the telethon with a written blurb ahead of time.

**Mr Somerville:** That is possible, yes.

**Mrs Marland:** I think that would be a good idea. Even if we did that once an hour, it would break in from the other. The other is just a set background with the wording on it that we see all the time.

**Mr Somerville:** Yes, it is the usual.

**Mrs Marland:** I think that is a great idea. I would like to see us do that, Mr Chairman, to give the approval to muscular dystrophy for that weekend but also for the month of August to give them the promotion leading up to it, because it is true that people will look for it on Global. So I would make that suggestion. It means a little bit of work for you with brackets, I know.

**Mr Somerville:** It is not that we do not want to do the work, and it is very little work for us. I would have to clear that through TVO with Ross Mayot there. I do not know

whether we are advertising, whether we are allowed to do that on our channel. We have a particular licence to broadcast the proceedings of the House and on occasions to do these other jobs, and we apply to the CRTC for a licence on these rare occasions. I think I would have to check that one through, but technically it is all possible.

**Mrs Marland:** Did we have to apply for permission for the previous application even though it is only on radio?

**Mr Somerville:** Yes. We always have to apply, and I would just add that extension to the application: can we promote and advise that this is going to happen on that date.

**Mrs Marland:** I hope we do that. Who owns the satellite?

**Mr Somerville:** Telesat Canada.

**Mrs Marland:** So we are just one of many customers.

**Mr Somerville:** Yes. We are one of 28 customers on that particular satellite.

**Mrs Marland:** How much does that cost us?

**Mr Somerville:** It costs \$1.2 million per year.

**Mrs Marland:** And TVO is another one of the 28 customers?

**Mr Somerville:** Yes. TVO is two customers; it has an English channel and a French channel, so it is considered two customers.

**Mrs Marland:** Interesting. Thank you.

**Mr Owens:** I guess Margaret stole my thunder. I wanted to move the motion that we support this request, but it sounds as if Margaret has done that. I fully support your request and certainly hope that whatever we can do as the Legislative Assembly to assist in the promotion of this endeavour, we will do, licence requirements notwithstanding.

**The Chair:** Before we move the motion I think there is one further question.

**Mr Mills:** I am sort of a stickler for regulations, and I have to believe that the no-advertising idea on that channel is very pertinent to this, to the way we run it as advertising. I see that, perhaps contrary to what Margaret says, we could set a precedent: Someone else comes in here and says, "How about giving us a plug here and there?" I do not think we should be a party to that.

I think the onus would be on Global, which ceased to carry that, to let everybody know long and hard and well before that in fact it is going to be carried on that channel. Perhaps they could advertise even on Rogers, where they run out the channels and what is going to be on. That could be a part of it.

I think there is a certain amount of dignity to that parliamentary channel and I do not like to see it become any form of advertisement. Maybe I am on my own here, but that is the way I feel and I would like to test that in this committee, that we do not go to TVOntario and seek permission, that we stick by the format and the rules and regulations we have. We would ask the Muscular Dystrophy Association and the cable companies to advertise the fact that they have decided that this channel is where it is going to be on such-and-such a date. I would like to try that eventually.



**Mrs Marland:** We do not have to go to TVO to ask permission. We get the permission, I gather, from the CRTC. That is the first thing. The second thing is, I do not think to promote a telethon for muscular dystrophy would be taking away the dignity from that channel. We are not selling Tide or Miss Vickie's Potato Chips.

I agree with what you are saying, Gord, if we are dealing with a commercial use in the sense that we know commercials. But I think if we agree with the use for the telethon for muscular dystrophy, then why would we disagree with trying to make that as successful as possible? We are not asking for an audio; we are simply asking for a printout.

The reason it is more valuable to muscular dystrophy, I would assume, on the channel—and I am quite sure Global will not give air time saying: "It's not with us folks this year. Turn to the parliamentary channel"—is that a lot of people do not know where the parliamentary channel is or what it is. If they are flipping and they see that, then they know that the telethon is coming.

I think we should just leave it up to the CRTC. If they give us permission to do the lead-in promotion, we are in. That is great for muscular dystrophy. If they say no, then they are dealing with it on the commercial licence basis.

**Ms Mullin:** I think there is a difference between advertising and public service announcements. Perhaps using the word "advertising" does make it sound like tossing something on the street corner. A public service announcement is just that, to inform the public of what is happening. That would be my sense of the difference between advertising and public service announcements that has been suggested.

**Mr Mills:** Maybe I used a poor choice of words. I do not want to belittle what you are doing, but I am just frightened of some sort of precedent being set, so that channel then becomes a vehicle. Supposing someone comes in and says, "Okay, we're promoting a heart run." That is like motherhood. We say, "Why don't we get them to say on the parliamentary channel that on such-and-such a date you can go to so-and-so?" That is public, that is good. I am just wondering about setting a precedent. Could it be construed that this channel is available for good news messages?

**The Chair:** I was wondering, before we proceed with a debate on this particular point, whether Bill could get some clarification on this issue from the CRTC. We should be able to do it by this time next week.

**Mr Somerville:** I will ask the question. I do not know whether I will get a response.

Just to clarify the record, Mrs Marland mentioned that we do not have to go through TVO. TVO actually does hold the licence for the Ontario parliamentary channel. When I say I would go, I would go via TVO to the CRTC. I would advise TVO of this committee's wishes and then TVO, together with myself and the muscular dystrophy people, will approach the CRTC. So it is a three-way approach to get permission from the CRTC to do what you are suggesting. I will work on it as fast as I can. Ross, would you like to add anything here?

1610

**Mr Mayot:** Hello. I am Ross Mayot from TVOntario. I would find no objection whatsoever to approaching the CRTC on this to get its judgement on whether it is perceived to be advertising or not. As the licensee, I am aware that they have put a proscription on any kind of promotional advertising materials, but I take the point of it being a public service announcement. I think I would be very pleased to pursue that.

If I may add, the notion of a precedent in terms of other groups wanting to use the channel when it is not in service by the House as a promotional vehicle I think is worth noting. For instance, might we promote Wawatay on the channel on a regular basis, and other groups for similar reasons. I only raise it for the committee's consideration. It is not something that TVO would have any previous position on.

**The Chair:** Is it possible that you could have some information back to this committee by this time next week?

**Mr Mayot:** Yes, sir.

**The Chair:** Maybe at that time we could settle that part of the debate, whether our particular parliamentary channel could or could not do promotional material.

**Mrs Marland:** I think what we should do is agree as a committee on how we would like to see it proceed and then leave it in their hands, because if TVO can give Bill and MD permission tomorrow, they can get on with their publicity. Another week for them, considering we are at the end of June already, is very critical. So I think if we can have a consensus of the committee that we agree that they do it, that they have it the Labour Day weekend, and if it meets CRTC approval and TVO can support us, that they just proceed. I apologize, I was wrong about TVO.

**Mr O'Neil:** I am sorry, I had to go out for a few minutes. This may already have been discussed. The cause you work for is a great one and the weekend you put on for raising funds is for a great use. But has the committee discussed while I was out all the other organizations that are going to come to us too, wanting to use part of that channel, not only for other fund-raisers but for things that may go on right across the province, everything?

**Mr Owens:** I would like to say something, and it may be inappropriate, but I will say it anyway. Whether it is MD or the heart and stroke fund or whatever organization, I think they clearly have a right as taxpayers who have already supported this station and support this building to come and put whatever kind of blurb they feel is appropriate for their particular organization. I think we are setting a terrible precedent here by feeling that we have the right to exclude people from public broadcasting outlets. I think we should take Margaret's suggestion and move with it. We are the committee that has the authority to decide. We should decide what we want to do and move forward. If it complies with CRTC regulations, then we go with it, but I do not think we can—

**Mr H. O'Neil:** It was not my intention to exclude anyone. That was not the reason I asked.

**Mr Owens:** Then why are we concerned about precedents, about who is going to come?



**The Chair:** Order, please. Could we have the discussion through the Chair?

**Mr H. O'Neil:** What I am saying is that where we have an excellent organization here, we maybe have another 200 or 300 right across the province that might also want to use the channel. As you say, if the channel is not being used, maybe it is a good idea to do it. But in that case, I think we would look to TVOntario to say what we would have to do in the way of scheduling, what sort of rules and regulations we would have to set in place as to what charitable organizations could use it. It is a precedent we would be setting. Again, as I say, if the channel is not being used, maybe it is good to have all these organizations be able to use it and schedule them in. So I am not, maybe as you are inferring, against this, but I think there are other things you have to look into and organize to make sure you do not get into some problems too.

**Mrs Marland:** I agree totally with Steve's comments. If that channel can be used more for these kinds of purposes, all we do is develop criteria. If the application meets the criteria, then we go ahead, the same way the decision was made with the previous application for Wawatay Native Communications Society. It is as big a priority to find a cure for any of the major diseases in this world as it is to educate any particular group of people. Those are both priorities for all of us: education and health. In using what exists for any of these uses, I think we are doing the right thing, for an investment, as Steve so eloquently said, has already been made. So let's do that: develop criteria, get permission from CRTC, and we will deal with TVO.

**Mr Chiarelli:** I do not want to get into the details of guidelines and how you would set the guidelines and the qualifications today. But neither do I think we should get into a situation similar to trying to define what a tourism exemption is. We have had governments now for 15 years trying to define it and always subject to criticism for one reason or another. It is difficult to define. There is a whole range of non-profit groups, ranging from the Church of Scientology to ones that are very well known in the community, good reputation, etc. It may be easy to say we will develop guidelines. But when you come down to the details of the guidelines, it may be very difficult to do that definition. I would certainly think that before the matter is dealt with in principle and approval for the concept, etc—you go down the road so far, and you are stuck with trying to define guidelines. You find out down the road, after a lot of time and effort, that really it is almost impossible to define the guidelines. I think there should be something working in parallel here, in terms of technical feasibility and approval, but also the nature of the qualifications and the guidelines, without defining them with particularity, should be addressed now, because I think it may be a very serious problem. It may be like trying to define a tourism exemption.

**Mr Somerville:** I would just draw the members to the regulations and procedures. Although it was developed by another Legislative Assembly committee and adopted in January 1989—and this committee has slightly different opinions and views than they had, and they laboured long and hard over trying to get these guidelines and regulations

together, for many of the points Mr Chiarelli just said, and it is difficult to say no—in co-operation with myself and TVO and the committee, these guidelines were developed. As a case in point, today I think you are going to approve the muscular dystrophy application. These were exceptions. They do not quite meet the guidelines and it is at the committee's discretion whether they are approved or disapproved. But as I said, the previous committee worked quite a long time to develop these guidelines and you may want to consider them.

**Mrs Marland:** Mr Chairman, I would like to, if you want a formal motion—

**The Chair:** I think there are a couple more comments here from the witnesses.

**Mrs Marland:** Do you want a motion? I would just move that the request of the Muscular Dystrophy Association of Canada to use our parliamentary channel over the weekend of 1 and 2 September 1991 be supported by this committee and, further to that, for the month of August some written announcement appear on that channel in advance of the weekend telethon to notify the public, understanding that the decision will have to be made between Mr Somerville and TVO and the CRTC.

1620

**The Chair:** There is a motion on the floor.

**Mr Mills:** Does that mean that if we were to accept this motion we are going to disregard the guidelines?

**Mrs Marland:** It is only here today because it is an exception to the guidelines, I understand. Is that right?

**Mr Mills:** This is what I am wondering, because there are all kinds of criteria down here that call for the on-air credit to the assistance by the Legislative Assembly, and some sort of insurance to indemnify us of legal liabilities. Is that part of this? I am just wondering, do we set a precedent and say, "Yes, we can do that, and this we disregard"?

**The Chair:** Maybe we can ask the witnesses to clarify these points.

**Mr Somerville:** They have to meet all these criteria. The only reason they do not meet the guidelines is as a user, but they still have to have the insurance, the identity, the CRTC approval. They have to meet all these criteria.

**Ms Mullin:** We have no problem with the criteria. I wanted to add, as well, that we are coming to you in a desperate move right now for a one-time event.

**The Chair:** Is there further discussion to the motion?

**Mr H. O'Neil:** The motion Margaret makes would make us appear like we were against motherhood. We know the wonderful work you do and everything else, and I hope that in raising this you do not take it that, as I say, we would be against the organization or anything else. It is the ramifications that could be down the road, that we could have thousands of groups wanting to come in and to use that channel for fund-raising events, and although most of them are very important and as worthwhile as yours, a lot of them are—but, as I say, Margaret has made a motion. I do not know. Do you say they fit within the guidelines?



**Mr Somerville:** All but as a user, but they will meet all the criteria for getting on the channel.

**Mr H. O'Neil:** Have we ever done this before?

**Mr Somerville:** Yes, on two occasions: the Whipper Billy Watson telethon on 6 December 1987 and the Rotel telethon on 8 October 1989.

**Mr H. O'Neil:** Actually, the precedent has been set; it has been used. So I would say your organization is as important as any—

**The Chair:** Ross, do you want to respond?

**Mr Mayot:** If I may. The reason for the guidelines, in furtherance to what Bill said, was to ensure that those applicants that did not fill the ongoing and educational criteria could appear and then the committee could decide. TVOntario is completely in agreement with that. The reason for the guidelines was to ensure that the Ontario Legislative Assembly channel did not become the fund-raising channel or the advocacy channel for various groups. So it was to allow this committee to determine on a case-by-case basis whether it was satisfied with the applicant.

**Mr Chiarelli:** I have serious, serious trouble with this particular issue. It is a matter of equity; it is a matter of fairness. If there is a group that subjectively and objectively has a good cause—and I question, first of all, how objective we can be without strict guidelines and qualifications. What is to stop the Citizens' Coalition group tomorrow from coming and saying, "Our cause is just as worthy as muscular dystrophy; we are interested in saving the economy of the country"? What about Pollution Probe or Friends of the Earth? They have very good causes, but they talk very frequently on political issues. They are talking social issues. They are talking technical social issues, in many respects, and if tomorrow we received an application from the Citizens' Coalition group or Pollution Probe, what criteria would we apply and how would we deal with it objectively? Is there an answer to that question?

**Mr Somerville:** If you are asking me the question, no. I would bring it back to the committee and let you decide.

**Mr Chiarelli:** I will put the question out for general debate and discussion. It is very serious. It seems clear-cut when you are dealing with this particular applicant, I will agree with that. But I am simply asking if tomorrow, because of this approval, we receive an application from either Pollution Probe or the Citizen's Coalition and we have to deal with it objectively, what will we be saying and why?

**Mrs Marland:** Can I answer, Mr Chairman?

**The Chair:** Certainly, through the Chair, Margaret.

**Mrs Marland:** Through the Chair I will answer Mr Chiarelli's question. My motion before the committee at this moment deals only with this application, and we have had it made very clear to us through Mr Somerville that the reason this one is before us is that it is an exception. It is here for our approval as an exception. If there are other exceptions, they are not automatically going to be approved because this one was. They would also have to come to this committee. I would be hopeful, frankly, that Mr Mayot is here today because TVO supports it. Am I right?

**Mr Mayot:** Mr Chair, we are here to execute the criteria and the wishes of the committee which has determined that any of the applicants are in its mind worthy of the exemption.

**Mrs Marland:** Good. That answers the question. Thank you.

**The Chair:** Further discussion on the motion? Hearing none, all those in favour of the motion? All those against? I believe it is carried unanimously.

Motion agreed to.

**The Chair:** Since a number of questions are raised here in committee today about this whole issue, maybe some time—obviously we do not have time in this session, but in the fall session—the whole issue of regulations and procedures and everything else could be revisited by this committee.

**Mr H. O'Neil:** Mr Chairman, I think that would be an excellent idea, because where do you draw the line? Easter Seals or things like that—they are not using it now—maybe should be using it. But I think we have to have some very strong guidelines and we have to look at them. So I would second what you are—

**The Chair:** Thank you. So the committee will revisit this issue in the fall.

Thank you very much for coming along this afternoon. Thank you.

**Mrs Marland:** Good luck.

**The Chair:** Good luck.

#### OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

**The Chair:** Could we have the next set of witnesses, please. I understand, from the Office of the Information and Privacy Commissioner, Mr Wright.

**Mrs Marland:** Mr Chairman, as our next witnesses are coming, I want to give them my personal apologies for the fact that I have to leave. I had a number of questions I wanted to ask you, but I have to leave for George McCague's retirement and it is all the way up in Alliston. I am sure this will not be the last time we will be together. I know it is the second time. I hope you will understand why I have to leave.

**The Chair:** I was wondering, if the committee agrees, that as Margaret has to leave she has a couple of minutes to ask some of the questions.

**Mr H. O'Neil:** No, I do not think so. She has been hard to get along with today.

**Mr Chiarelli:** You are asking her to do something impossible. Margaret cannot restrict herself to two minutes.

**The Chair:** A couple of quick questions, Margaret, and maybe we can get a couple of quick answers for you.

**Mr H. O'Neil:** Let her take as long as she wants.

**Mrs Marland:** Some time before we get together again, are you going to be in a position to bring forward your suggestions that you may have discussed since the last time we were together about what things we can do to improve the function of the act through your office? We actually have been hearing that there are exemptions that there should not be and we are also hearing that there



should be exemptions added. Because you are the people who have firsthand experience, will you be in a position to help us with that?

**Mr Wright:** We can certainly help you to a degree, and I believe in our initial report, in the first volume of that report, we set out our views on changes that could be made to the legislation.

**Mrs Marland:** Yes, you did.

1630

**Mr Wright:** I am not sure just how much more we can do as an office, as opposed to simply presenting that to the committee, making it available in terms of our views of the legislation and allowing the committee to look at that and make its own decision on the merits. I realize the difficulty. We clearly possess expertise in this area. There is no question about it. Something we have been addressing over some period of time and very carefully is just what our role should be. We certainly do not want to—

**Mrs Marland:** The role should be in the review?

**Mr Wright:** Exactly. We do not want to presume to be in fact trying to persuade the committee as to a particular direction. Other than that, we are certainly prepared to offer whatever we can by way of things that we feel will work, things we feel will not work, and what we see as needs that will in fact result in improvements to the legislation. That much I can certainly offer to you.

**Mrs Marland:** That is excellent. I am sure you have had somebody on your staff review the transcripts of our Hansard where the concerns of other parties have been raised.

**Mr Wright:** Yes.

**Mrs Marland:** It was on that basis that I wondered if you might have more to add to your initial presentation. I know your initial presentation was excellent. It was very comprehensive.

**Mr Wright:** In fact, in advance of appearing today we tried to do a second report which looked at various of the recommendations. We selected some, though I think it fair to say the ones we felt perhaps would be worthy of further consideration by the committee, and we tried to give our own views to some extent of those recommendations as well as the impact that some of those recommendations would have on the legislation, either positive or negative. I think the report you have before you this afternoon goes a fair way towards the sort of things you are suggesting.

**Mrs Marland:** I think we just got this, though, did we not? We just got it now.

**Mr H. O'Neil:** What is our timing on this? Are we supposed to have this report completed by the end of this year?

**The Chair:** Yes. I understand 12 December of this year.

**Mr H. O'Neil:** I suppose this kind of question is going to depend a lot upon ourselves, but let's face it, you and your staff are going to be the ones who are going to be doing most of the work and suggestions along with what we have heard and seen. Is it realistic, the end of the year?

**Mr Wright:** Again, I think if you look at the legislation itself, it talks about the obligations of the committee

and when it has to report. My understanding is that the review has to be done within one year. That is in fact a requirement of the act. I suppose that in a way drives the reality of what can happen here. As far as our participation is concerned, we certainly recognize the importance of this review and want to participate as actively as we can and would certainly make it a priority as far as what we could do to co-operate with the committee.

**Mr H. O'Neil:** In other words, Mr Chairman, we are going to finish up next week, then are we sitting for a week here in the summer?

**The Chair:** We actually requested two weeks during the summer.

**Mr H. O'Neil:** That has not been approved, has it?

**The Chair:** Unless the clerk has heard back from the leaders, at this point we do not know.

**Mr H. O'Neil:** In fact, when I looked at the schedule, it does not even appear as if we are having one week.

**The Chair:** Well, they have to grant one week for the members who are travelling to Orlando. However, we requested an additional week plus a possible extra week as well, and we have not heard back yet on our request. We were hoping to begin to look at doing an interim report to the House on the issues we have found, and then spend the summertime focusing on those various areas in more detail and inviting more public comment on those particular areas over the summer.

**Mrs Marland:** Since Mr Wright is going to read his comments and I have a copy of them, I will be able to—I have just written a note. I do not do this on everything that comes from a committee, but I have written a note on this that I must read this. So I will read it, and I will look forward to our getting together again in September.

**The Chair:** We have one more week next week, Margaret.

**Mrs Marland:** No, I do not mean as a committee. I mean with the commissioner's office.

**The Chair:** Hopefully so. Commissioner, thank you. Maybe you could introduce both yourself and your other members.

**Mr Wright:** I will. Thank you, Mr Chair. Yes, my name is Tom Wright. I am Ontario's second Information and Privacy Commissioner and was appointed in April of this year. To my right is Ann Cavoukian. Ann is the assistant commissioner of privacy. To my left is Tom Mitchinson. Tom is the executive director of our office. The three of us form the executive committee of the Office of the Information and Privacy Commissioner. As well, in the audience this afternoon is John Eichmanis. John is the senior policy adviser with our office. He may be familiar to some of you around the Legislature. John has worked very hard in terms of preparing the report that we presented to you most recently.

This is my first chance to appear before you as commissioner and to meet with you as members of the Legislative Assembly. I thought I would begin by making a few general comments in terms of the role of the information and privacy commission. I want to indicate that my goal is



to continue the good work initiated by the first commissioner and, where I can, to build upon it. As I begin my term as commissioner, I recognize that the IPC will need to continue to evolve and learn over time. However, I am confident that with the assistance of excellent staff we will be able to meet whatever challenges lie ahead.

Members may recall that the last time we appeared before the committee, we presented you with a comprehensive report outlining our views on how the act is working in general, our suggestions for changes to specific provisions of the act and our concerns regarding several significant privacy issues. I would like to repeat that I think the act is working reasonably well. However, this is not to say that amendments should not be made to refine and improve the statute. No piece of legislation is perfect and certainly this act is no exception.

As we have referred to already this afternoon, you have received our report regarding various written submissions that were presented to you as part of your three-year review. I hope you will appreciate that this report was difficult to write. We had to be mindful of the fact that our views are no more significant than any other presenter's. At the same time, as I have indicated already, we understand that the committee wanted us to provide our comments to assist in its deliberations.

Accordingly, we have provided you with our perspective on the submission as well as with additional information on particular points. We have refrained from making final judgements about these submissions, recognizing that the committee will want to draw its own conclusions as to the merits of the recommendations. However, we have attempted to highlight significant or complex recommendations, as well as those that we think the committee should study further.

On the whole, our view is that the submissions received by the committee were thoughtful and represented genuine attempts to improve the act. While I recognize that I was asked here today, at least in part, to respond to your specific questions, there are several points I would like to briefly discuss beforehand.

I understand that you are contemplating writing an interim report that may include observations on your review to date and possibly some recommendations. If that is the case, I would like to draw the committee's attention to a recommendation that we believe should be addressed now. It is not directly related to the act and action would not entail any amendments or revisions. I am referring to the recommendation on computer matching in our report entitled *Privacy and Computer Matching*.

Permit me to say a few words about why we think this issue is important and why our recommendation should be carefully considered. At this time, computer matching does not occupy a major place on the public agenda, yet despite the fact that it does not have a high profile in Ontario, it does command considerable attention worldwide and is of particular concern to those who are given the responsibility of overseeing privacy issues.

As described to the committee when we last appeared before it, matching involves the computerized linkage of automated record systems or databases to identify similarities or differences in information. What concerns us is the fact

that without adequate safeguards computer matching has a serious potential for becoming a mechanism for the invasion of individual privacy.

**Mr Cooper:** Can I call for a brief recess until we get a quorum in here? I think it is important that we should have more people in here right now.

**The Chair:** Recognizing we do not have a quorum here in committee, I will order a five-minute recess to locate the members.

The committee recessed at 1640.

1646

**The Chair:** I recognize a quorum.

**Mr H. O'Neil:** Mr Chairman, I have a bit of a problem. I have to leave for Stratford at 5 o'clock and Carman McClelland, who is a member of the committee, is waiting for Mr Conway to finish so he can speak, and Mr Chiarelli had to fly back to Ottawa for something. As was mentioned by Mr Cooper, it is very important.

I do not know how you propose to handle it. I would like to hear as much as we can of it. I certainly have a copy of the presentation plus the other information. There is some good stuff in there which has been given to us to have a look at for the next couple of weeks, instead of the next month. I do not feel that because some of us have to leave it is a slight, because I for one appreciate the work you are doing and I know you have had some of your staff here through all decisions.

**The Chair:** Mr Cooper was wondering if maybe we could—I know you have to leave by 5—try to get your presentation this afternoon, and if possible you could come back next week and continue where you left off for any answers to questions. I know you were to go into closed session to discuss the format and content and possible recommendations in the interim report, and there is no way we can do that this afternoon. Is that the kind of direction the committee wishes to proceed in? Okay, you may continue, Mr Wright.

**Mr Wright:** Just to get back on pace here, I was talking a little bit about a few of the issues that from our point of view we would encourage the committee to consider in terms of its interim report.

I was talking about computer matching and I am on page 4 of the presentation. I was saying that we believe that a determination on how this issue should be dealt with from a policy point of view can only be reached if there is some understanding of how extensively this practice is used in the Ontario public sector, and some identification of the purposes for which computer matching is used. To date, such an understanding is lacking.

This is why the IPC recommended that a task force undertake an inventory of computer matching within the Ontario government and make recommendations on how this practice should be controlled so that it does not lead to large-scale invasions of privacy. Were a recommendation of this kind adopted by this committee and ultimately by the government, it would put Ontario in the forefront with those jurisdictions that recognize the serious consequences for privacy of widespread use of unregulated computer matching.



My second point this afternoon, which I would like to address, is one that came up in several of the submissions relating to access to records by researchers. It was pointed out that for all but two of the exemptions there are no time limits on how long exemptions may be applied. This matter becomes problematic for researchers when they go to the archives of Ontario and find that archival and historical records have to be vetted to determine whether an exemption applies, no matter how long it has been in the archives.

I should point out to you that the Williams commission thought archival material should be recognized as such and treated differently from contemporary records. The commission recommended that once a record is transferred to the archives, the confidentiality period set by the originating institution should be observed.

I will give you an example of that. If a ministry sent its administrative records to the archives and designated a 10-year confidentiality period, the Williams commission envisaged that after 10 years, those records would be publicly available. The act's exemptions, and most importantly, apart from those relating to personal information, would no longer apply after the 10-year period.

It would appear that what the Williams commission conceived is not reflected in the present act. The Information and Privacy Commissioner believes that access under the act to archival or historical records poses unique problems that should be examined and addressed by the committee.

Finally, I would like to take a moment and talk a little bit more about the information and privacy commission itself and where it is going in the future. As you can appreciate, the initial years of the commission have focused on creating the organization, recruiting staff, establishing practices and procedures, ensuring that appeals are processed properly and determining the form and scope of our compliance investigations. In short, we have been somewhat inward-looking and I believe understandably so.

However, as the IPC moves forward, I believe we must look beyond the confines of the agency's day-to-day operation. We will continue to ensure that the operations of the IPC are run effectively and efficiently, and our major challenge will be the integration of the Municipal Act within our present operations.

We want to turn our attention to communicating with the general public. I believe the act speaks to the citizens of Ontario in their dual nature as public and private persons. In their public role, Ontario residents should be aware of and know how to use the act in order to learn more about

their government and to participate more actively in the public issues of the day. The freedom-of-information dimension of the act seeks to address and encourage the public role of Ontario citizens. It is our job to carry that message to the public, and I hope I can count on your support in this endeavour.

Turning now to this private capacity, Ontario residents are given assurances by the act that their privacy and particularly their informational privacy will be protected. Here the IPC's challenge will be twofold, to oversee institutions' compliance with the act and to respond with advice on how privacy can be protected in an age of privacy-intrusive technology. On this latter issue, we will be producing policy papers on a wide range of privacy issues that we hope will inform the public, the members of the Legislature and the government and provide some policy direction on how these issues should be addressed.

I would like to close by mentioning the fact that we have had numerous discussions with the Ministry of Health on the need for legislation to protect the personal information collected and used in the medical setting. While the ministry has committed itself to introducing a health care privacy act, it would appear that this project is now only one of many priorities for the ministry. The IPC regrets this and hopes the ministry will proceed with this legislation soon. If there is anything the committee could do to remind the ministry of its commitment, we would certainly appreciate it.

In closing, I thank you for the opportunity to address the committee. I look at the clock and I see that there is very little time if you are moving to a 5 o'clock adjournment. I certainly am more than willing to make myself available if the committee would wish me to reattend next week.

**The Chair:** Is it the wish of the committee to adjourn at this point and ask the commissioner and the assistant commissioner to appear back in front of the committee next week to answer questions on this report and other issues?

**Mr Mills:** Margaret said she would read it, and I am sure I would recommend that other people on the committee read it before they come back.

**The Chair:** We would appreciate your coming back next week.

**Mr Wright:** Is that on Wednesday again?

**The Chair:** Wednesday at 3:30. The committee stands adjourned until next Wednesday at 3:30.

The committee adjourned at 1655.

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M-17 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Wednesday 26 June 1991

## Journal des débats (Hansard)

Le mercredi 26 juin 1991

### Standing committee on the Legislative Assembly

Review of  
Freedom of information and  
Protection of Privacy Act, 1987

### Comité permanent de l'Assemblée législative

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 26 June 1991

The committee met at 1545 in room 228.

### REVIEW OF FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act 1987.

**The Chair:** When we left off last week we had just heard a submission from the Office of the Information and Privacy Commissioner. They are back here this afternoon to answer any questions we may have as a result of their presentation. I wish to call back the members from the Office of the Information and Privacy Commissioner.

### OFFICE OF THE INFORMATION AND PRIVACY COMMISSIONER

**The Chair:** Thank you for coming back this afternoon. I think I will read the questions. Did you have any further comments you wished to make?

**Mr Wright:** No, I do not think so. I believe you are correct, I had finished my remarks related to our most recent report to you and we had left it that any questions would be asked this afternoon and, of course, we are back here to answer those questions.

**The Chair:** Thank you. The floor is now open for questions.

**Mr H. O'Neil:** I see you are quite strong in your recommendations regarding some of the discussions we had with the media as to what should and should not be released.

**Mr Wright:** Are you referring to particular types of information?

**Mr H. O'Neil:** Yes, those that should be released to the media.

**Mr Wright:** I am afraid you are going to have to help me out a bit.

**Mr H. O'Neil:** We had recommendations from different people in the media saying they wanted to be allowed to release certain information and print it, and you disagreed with those suggestions.

**Mr Wright:** I think I understand now what you are referring to. Yes, we have addressed the question of personal information relating to witnesses, victims and things of this nature which I believe you received some submissions on. We felt that basically the way to deal with it, rather than immediately considering the possibility of amendments to the legislation, would be to allow the act as it now reads to work, and allow the office to deal with the issue in the context of an appeal that we might receive from a denial of access to that information.

I know there has been a lot of coverage of that particular issue, certainly in January of this year, but to this point our office has received the grand total of one appeal involving

that issue. So from the perspective of our office, it certainly has not been a big issue in terms of appeals, which I think is an interesting observation.

**Mr H. O'Neil:** That is an interesting figure too, as you say, just one appeal.

**Mr Wright:** Yes.

**Mr H. O'Neil:** In other words we will be going through this with our own staff as to the changes that should or should not be made. I would like to feel, as one of the members of the committee, that you will have people here if we need some type of assistance and some advice?

**Mr Wright:** We look forward to the opportunity and certainly would do whatever we could to co-operate in that way.

**Mr Frankford:** You say you had discussions with the Ministry of Health. Is that including the information that goes on to OHIP claims?

**Mr Wright:** You are referring to the Health Care Accessibility Act?

**Mr Frankford:** Yes.

**Mr Wright:** Ann Cavoukian, who is assistant commissioner of privacy, has been most directly involved with that and I pass the question over to her if I may.

**Dr Cavoukian:** If you are referring to the health care information act that we referred to in here, we have very recently had conversations with senior officials at the Ministry of Health and they have reiterated their commitment to the protection of privacy and confidentiality associated with health records.

We have been informed that in the fall of this year a draft bill should be ready, although I cannot be certain of that, and we are continuing to have discussions with them, giving them whatever assistance we can by way of privacy principles that should be considered to be included in this kind of legislation. We are optimistic that at some point this year perhaps, if not a draft bill, at least a policy paper which could be the precursor to the bill, will be ready at the Ministry of Health for consultation purposes.

**Mr Wright:** In addition to that, the reason specific reference was made to that type of legislation is that there is quite a long history in Ontario dealing with concerns over confidentiality of health records. The Krever commission did a report many years ago. The subject has been on the agenda for a long time and I think we felt it is getting close enough that we would simply like to reinforce with this committee the fact that perhaps, with some assistance from this committee, and just to keep everyone aware of the issue, we can take that next step which will get us the bill in some form.



**Mr Frankford:** It is really not so much clinical records; it is claims which include a diagnosis.

**Mr Wright:** It is very broad, as I understand it; basically medical records. That would include records with hospitals, quite outside the Ministry of Health itself and OHIP; doctors' offices and other things of this nature. The legislation would be quite broad in its application.

**Dr Cavoukian:** Wherever medical records reside, this piece of legislation would cover confidentiality.

**The Chair:** I again wish to thank the commissioner, the assistant commissioner and the executive director of the Office of the Information and Privacy Commissioner for coming along here this afternoon. We surely will be in touch as we progress with this review of the act. Thank you very much.

#### MANAGEMENT BOARD SECRETARIAT

**The Chair:** Frank White, director of the freedom of information and privacy branch of the Management Board Secretariat is here this afternoon as well. I understand Margaret had some questions she wanted to ask, but she is not here at this point. Is there anyone else on the committee who wishes to ask Frank White some questions?

**Mr White:** I think I can respond to the question she asked in terms of the provincial agencies that were covered and those that were not covered by the provincial Freedom of Information and Protection of Privacy Act.

You will notice that under the definition of "institution" on page 6 of the act, it is any ministry of the Ontario government and then, by regulation, any agency, board, commission or corporation or other body that would be designated by the regulations.

In the Ontario Directives manual, which is the corporate administrative manual of the Ontario government, there is a policy on the establishment and scheduling of government agencies, and a listing of all the agencies the government considers agencies of the Ontario government; they are divided into three schedules.

Schedule 1 is those agencies that are very close to government, many of the advisory committees, many of the regulatory agencies like the Ontario Municipal Board, all the grievance boards. Schedule 2 is the crown corporations like Ontario Hydro, the Niagara Parks Commission, the Ontario Northland Transportation Commission, the Liquor Control Board. There are about 18 of them. They are usually viewed as commercial agencies. Then in schedule 3 are cultural and arts types of organizations.

At the time the Attorney General introduced the bill for second reading, he said the intent of the government was to include all those schedule 1 and 2 agencies routinely to be covered by the Freedom of Information and Protection of Privacy Act.

During the debate the other parties felt that some of the schedule 3 agencies should be covered. They gave the Attorney General a list of those agencies and he said he would take it upon himself to have those covered. What you ended up with were the community colleges, district health councils, local housing authorities and the Workers'

Compensation Board as schedule 3 agencies being covered and no others being covered since that date.

In the back of the provincial act you will see a listing of all the agencies that are covered. That includes every schedule 1 and schedule 2 agency and then some schedule 3s. I do have a listing, which I will see if I can get the committee clerk to pass out when he comes back, of the schedule 3 agencies that are covered and those that are not covered. That is what has happened. No other schedule 3 agencies have been covered since the bill was passed and became effective 1 January 1988.

**The Chair:** Any questions.

**Mr H. O'Neil:** Not pertaining to this. We have heard from Mr Wright. With regard to not only his statement but some of the other suggestions and comments on some of the things that we have heard through the committee hearings, do you review those also for suggestions that might come from yourself or do you work with them?

**Mr White:** Are you looking for suggestions?

**Mr H. O'Neil:** Yes.

**Mr White:** The Minister, Frances Lankin, has said she would be appearing at the committee during the second set of hearings. I think if there were any suggestions or proposals of areas of interest from the government, she would be presenting them at that time.

**Mr H. O'Neil:** Have we any idea when that might be?

**Mr White:** I think once the committee determines when the next set of hearings will be. She has made a commitment to appear during that set of hearings. If there is anything in terms of how the act has been operating, or situations that have turned up while the act has been in operation that the committee would like to discuss, we will certainly be available to discuss that. But I think the minister would be the one to present any proposals or areas of interest to the committee. She would of course be interested if you felt some suggestions should be made.

**The Chair:** I think that can come up for discussion in the next item of business.

**Mr Owens:** Just in response to your question, the minister has been asking, through her staff, when she can come to the committee. Because we are not scheduled to meet over the summer, as I can see from the hearings, she will definitely come to see us first thing in the fall. She is ready, willing and prepared to come and will do so at the earliest possible moment.

**Mr H. O'Neil:** Going back, Management Board and the minister, you people have all of the papers that have been handed to us. Now this particular paper, do you have a copy of that?

**Mr White:** Yes.

**Mr H. O'Neil:** Do you have a copy of the one that was prepared by Andrew on this particular one?

**Mr White:** Yes.

**Mr H. O'Neil:** In other words, you have all of those and the minister will make comments on any suggestions in there that she was in agreement or was not in agreement with?



**Mr White:** I am not sure what the minister would like to do in terms of the way she would address your request right now.

**Mrs Marland:** I am sorry. This is one of those afternoons when I am supposed to be at three different places all at the same time.

We have been talking about what agencies were not covered by the act. I do not think the one I am looking for is on this list, and I am not sure what schedule agency TVOntario is.

**Mr White:** That is a schedule 3: the Ontario Educational Communications Authority.

**Mrs Marland:** Oh, it is? All right. Maybe by reading Hansard I will find out why schedule 3s are exempt from the act.

**Mr White:** I actually just mentioned to the committee members that during the review of the provincial bill the opposition parties of that time asked for some schedule 3 agencies to be covered and the Attorney General took it upon himself at that time to cover them by regulation, but none has been added since then. What you see before you is a list of the 3s that were covered, at the bottom, and ones that have not been since that point in time. At the bottom would be the ones that are covered.

1600

**Mrs Marland:** Have the six schedule 3 agencies at the bottom that are currently covered been added since the act was proclaimed?

**Mr White:** The commitment was made to cover them during the review of the original bill and they were added on 1 January 1989. They were given a year to prepare.

**Mrs Marland:** Was there a review of this bill at that time, then?

**Mr White:** This was when the original bill was being debated.

**Mrs Marland:** I see. So are you saying it will be possible for this committee to make recommendations for further additions to that list that are presently exempted that could be added to be covered by the act?

**Mr White:** I would think the minister would be quite interested in the committee's opinion on further coverage.

**Mrs Marland:** Which minister would?

**Mr White:** The Chairman of Management Board of Cabinet, Frances Lankin. These agencies are covered by regulation, so it is not something that would have to be added to the act; it would be added to regulations made under the act. In the back of the act you would have a copy of all the regulations, which include all those agencies that are schedule right now, currently.

**Mrs Marland:** By regulation, and it would not require an amendment to the act; it would just require the government to agree by regulation to remove their present exemptions.

**Mr White:** That is right.

**Mrs Marland:** I have a lot of concern about some of these schedule 3 agencies, Mr Chairman, which I will address at the time that we are preparing our report.

Do you know the background of why schedule 3 agencies were not included originally?

**Mr White:** Yes. During the debate, when the bill was being considered after second reading, the NDP suggested that the government policy would be to automatically schedule the schedule 1 and schedule 2 agencies under the act. They are listed in Management Board policy, establishment and scheduling of agencies, and that is automatically done now every time a new schedule 1 or 2 agency is established. It is automatically covered by regulation by the provincial Freedom of Information and Protection of Privacy Act.

At that time, the NDP felt that—and this will be in Hansard—other agencies should be covered. They gave a list to the Attorney General at that time and he undertook during the debate to have those agencies covered by regulation. The agencies at the bottom of that list are the ones that were covered. I do not know why certain were picked out at the time and others were not.

**Mrs Marland:** But are you saying those six at the bottom were proposed at that time by the NDP caucus?

**Mr White:** Yes. It was actually more than six, if I could point out. There are 21 community colleges and 29 district health councils, 58 local housing authorities.

**Mrs Marland:** Do you know if any of the list that are currently still exempt were also discussed and set aside? Are you familiar with whether any of those were discussed?

**Mr White:** I believe there were three on the list. The three were the medical—Clarke Institute and the Addiction Research Foundation, and I think they were set aside at that time because, as Mr Wright was saying, the Ministry of Health had made a commitment to introduce comprehensive health information privacy and confidentiality access laws. So it was felt they would much better be handled with a health access and privacy act, because of the patient records. So those three were—

**Mrs Marland:** Does the Clarke Institute come under the Ontario Mental Health Foundation?

**Mr White:** I do not know. I just do not know. The Mental Health Act?

**Mrs Marland:** No, I am looking for which of these agencies the Clarke Institute—you mentioned the Clarke Institute and I am trying to see where it would come.

**Mr White:** There were the Clarke and the Addiction Research Foundation. I believe there is the Ontario Cancer Institute.

**Mrs Marland:** The Addiction Research Foundation would not be under the Cancer Institute, would it?

**Mr White:** No, it would be separate. I did not keep a copy of the list.

**Mrs Marland:** The Ontario Research Foundation is on. I know we will be getting into this debate at another time. I think it is really significant that those schedule 3 agencies which are currently covered include agencies which function totally on public money, whether the money is flowed through to them from the government or through public subscription. The 22 community colleges would be a good example of that. They are supported by



subscription by the students who attend them and by funding directly from the provincial government; certainly the same with housing authorities and district health councils.

When I see now a comparison of a list of those that are exempt with a list of those that have to come under the act, it certainly gives me some more argument about why some of these other schedule 3 agencies should be under the act, because it is totally wrong that something like the Royal Ontario Museum has to answer to the public under the act—which I agree with, by the way—and TVO does not.

I think when we get the report from the Provincial Auditor we will all be able to better understand why I am concerned. Other than where there is the confidentiality issue, which I respect with anything to do with health or mental health or addiction treatment and so forth, there are a whole lot of other regulations that govern those kinds of schedule 3 agencies anyway. When you look at things like Thunder Bay Ski Jumps Ltd, why should it not be open for public review? What we are dealing with under the act is an ability for the public to be able to find out what is happening to their money. It is just pure and simple. It is taxpayers' money. The public should be able to ask questions about how that money is being spent and how that facility or that service is being administered. We will look forward to discussing that at some time in the future.

I appreciate the opportunity to at least understand better where the schedule 3 agencies lie. I was not aware of the fact that there were already existing powers under the regulations to add and include presently exempted schedule 3 agencies.

#### COMPREHENSIVE REVIEW

**The Chair:** The next item on the agenda is a closed-session discussion on the format and content and possible recommendations of this committee on the report of the comprehensive review.

The committee continued in camera at 1609.

1630

#### OFFICE OF THE EXECUTIVE DIRECTOR, ASSEMBLY SERVICES

**The Vice-Chair:** Would the witnesses please come forward and identify yourselves. This is a review of proposals for members' pins. If I may make a special request, I am having a problem with ears as a result of an infection. I would appreciate it very much if those who speak, speak up. I apologize, but I cannot do much about it.

**Mrs Speakman:** My name is Barbara Speakman from assembly services division. With me is Karyn Leonard from interparliamentary and public relations. I believe Mrs Marland has already briefed the committee on a preview we had earlier today with some of the designs that have come in from some suppliers on a pin that would be exclusive to members and would be a combination of a security-type pin so the security staff would automatically recognize a member—we have turnover in staff and it is sometimes difficult for them—and also something that would be of use to you or of value to you either in the building or elsewhere if you go out and want to have something that is unique as a member.

The Speaker had asked us to look at a variety of options in terms of the use of symbols such as the mace. The amethyst, for example, might be an idea to incorporate. Karyn has gone out and come up with very preliminary ideas. At this stage we wanted to run them by you to get your feelings on what you like and what you do not like, so that we can eliminate some of those ideas right off the bat and concentrate on maybe one or two special items that you are in favour of, come back with something better and circulate that and come up with the final pin, hopefully for September for when you come back in the fall session.

We also have one additional item here today that, if you have time, we would like you to look at. We have had some requests from the men for a Legislative Assembly tie. We used to have one years ago and it sort of went into disuse. We have some samples and ideas for you to look at today too, but first of all I think the pin. I would like to hand it over to Karyn.

**Mrs Leonard:** I think the one thing that we want to stress with this is that all of the companies we are dealing with have entirely Canadian-made products. As you may know, our Legislative Assembly gift shop stresses bringing forward a lot of the artisans and a lot of the craftsmanship that is available here in Ontario. So we are looking at Ontario-based first and foremost, and when we cannot get it in Ontario we certainly go across the country for other products. I want to stress that to you. All of our quotes are based on Canadian-made products as opposed to an off-shore kind of base.

I do not know how you want to go about this today. These pins are somewhat in an awkward thing to pass around, but we do have several. Maybe passing them around is one of the better ideas. Mrs Marland, as Barbara has indicated, has already spoken with most of you about the pins. This round one is from a golf club and it is purely a sample of a style. It is nothing to do with what we are looking for, other than the style of the pin and the fact that it is yellow gold.

The idea has been put forward to have perhaps a coat of arms placed on top of this flat gold piece. Whether the coat of arms would be raised or whether it would be enamelled is entirely up to all of you. That is part of your decision-making process. Maybe what I will do is pass this one around in this little bag and you can have a look at it.

Another idea that has been placed before us is to have the amethyst included as part of this. You can look at having an amethyst perhaps placed on an off-centre basis on this pin. I will just pass the two around in a little bag so they do not get lost.

**The Vice-Chair:** Does the committee want to have them handed around or do you want to go up to the table and look at them collectively?

**Mr H. O'Neil:** We will do whatever you want.

**The Vice-Chair:** Go and look at them collectively. Thank you. Come back and resume your seats, please.

**Mrs Speakman:** I understand you are going to have a subcommittee look at this now. Is that one of the ideas?

**Mr H. O'Neil:** During the summer months.



**Mrs Speakman:** During the summer. I think we have reached consensus on the one you want to pursue a little further, anyway, and then maybe we can come up with a couple of designs around that theme that we can then distribute and let you make a decision.

**Mrs Leonard:** We understand it is the round one that most people seem to favour, and you would like to see an amethyst piece with the coat of arms placed on top of that amethyst.

**Mr H. O'Neil:** That was one. Gord, you had another suggestion too, did you not, more along the federal?

**Mr Mills:** I would like to see the mace incorporated. That signifies to me that the person who has it on is a parliamentarian. As it is, it could be something from a high-class gift shop unless it is signified with the symbol of Parliament.

**Mrs Speakman:** That is good. I think that is enough for us to continue.

Now, the ties: I realize not everybody here is interested in the ties.

**Mr Mills:** I am, very much.

**Mrs Speakman:** The majority seem to be. We thought we would just take the opportunity of being here to let you see some of the ideas and styles and try again to get some kind of consensus on which ones you prefer. Our preference is the silk as opposed to the other ones. We wanted something a little more—

**Mrs Leonard:** We have the formats and this is purely to show you what the different styles of the ties would perhaps be. These are to give you an idea of what these look like and that is a sample of the woven silk, which I think is probably the best one.

We want to know whether you would like to have it with a coat of arms. Would you prefer it with a single coat of arms, smaller coats of arms woven in as this one is here? If you can give us a bit of direction on that, we can go out and have something else designed.

**Mr Mills:** My preference is the coat of arms all over the place, like that—the coat of arms everywhere.

**Mr Cooper:** Without the stripes.

**Mr Mills:** Without the stripes and in silk.

**Interjection:** On a dark background.

**Mr H. O'Neil:** The only thing is, we have Ontario ties now, do we not?

**Mrs Leonard:** We have Ontario polyester ties which are not selling at all. They have been in stock I understand for something around the 10- to 12-year mark. They are totally polyester and not really in keeping with the current trend in attire.

**Mr H. O'Neil:** The current trends are against any type of thing like that. I used to be given all kinds of ties from different organizations that had their names printed on them. I never wore them. If we go to the expense of having ties made, are they going to be given away as gifts or are we supposed to wear them ourselves?

**Mrs Leonard:** I personally think that would be a decision you would want to make as a group. A lot of the

members do come and want to buy ties for gift purposes. They are not necessarily wearing them themselves. I see a few people who do wear ties that have been given to them from various jurisdictions around the world, but for the majority, I would say, in accordance with what our shop manager tells me, people are buying them for gifts, for presentation purposes.

**Mr Jamison:** There is only one problem I have. I understand that it would be for gifts and that possibly members would wear them. The problem I have is that styles of ties change so dramatically that if you were to order, for example, 1,000 ties at a time, you could be stuck with 500 or 600 ties on hand that are simply not—as we look around the room, I do not think many of us would be wearing the ties we are wearing today three or four years ago. It is the width of a tie, and the style changes where you go into thin ties, and then two years later you would be into the broad ties again.

I think part of the problem with ordering ties is being able to really order on demand and get a supplier who would be able to keep up with the fashion style at that point, whether it be a thin tie or whatever.

**Mrs Leonard:** That is definitely part of the problem.

**Mr Owens:** Would there be a corresponding scarf or neckerchief for the female members?

**Mrs Leonard:** Yes, it certainly could be done. We have not had a lot of request for that, I have to tell you. We do have beautiful hand-painted silk scarves that are very popular for both members who are buying gifts and for the public coming in. Those are far more popular than the corresponding scarves would be, I would think from past history.

**Mr H. O'Neil:** They are very nice. I have picked up different ones down in the gift shop for gifts too.

**Mrs Leonard:** As I hope you have noticed with our legislative gift shop, we really are trying to have very unique items so everything is not the same as going elsewhere to buy gifts, thing that are very unique to the Legislature as well, not Toronto souvenirs.

We are in the process now of developing a questionnaire which will go out we hope to all of the members in the fall asking you exactly what you would like to see in the shop, also asking you whether you have anyone in your riding who might be interested that you are aware of, or who might have a special talent, a special gift he or she would like perhaps to have reviewed by the shop itself.

As I am sure you have noticed, we have a lot of artisans who come to us and they do like to display here in the building. We try to accommodate those requests as well. Our shop is changing. We took it over approximately a year and a half ago, so that is the end we are working towards. Having the kinds of requests that we have down there, we have to come back to you and say: "Do you really want to see ties? Are you going to buy them as gifts?" Or are they something you do not feel are worth our putting both the effort and the investment into?

**Mr Mills:** I was under a little different conception of the tie. I thought the tie you were thinking of was unique to members. I know that I belong to a particular unit in the



forces and I have that tie, what you would call a regimental tie. I wear that when I go within certain groups hoping that it is going to prompt some conversation, that people would introduce themselves, that they know where I am coming from.

I thought that when you go somewhere and you put the tie on, it has some sort of connotations of where you are coming from. It helps to introduce you to people.

I can see the problem. If it is just a gift shop tie, to me, I do not really think that is going to be too successful. But if there were a tie in some design, like with the coat of arms, that was uniquely and specifically for members, I can see a member always having one or two on hand for those occasions, not to wear in here perhaps daily, but when you go to functions. It helps people recognize who you are. I think that is so important. That was what I thought this was about, with the quotes.

**Mrs Speakman:** Certainly we can do that. Maybe it was the connection to the pin as well. That becomes very much more expensive because you are doing only—

**Mr Mills:** Specialty.

1650

**Mrs Speakman:** Say you have two each, 260, which is a lot different proposition. But it is possible, if that was what the members would like us to do, but it would not be 130, of course, would it?

**Mr Mills:** No.

**Mrs Speakman:** It would be fewer.

**Mr Mills:** We could get four, five or whatever.

**Mrs Speakman:** That is right. It is something we would like to leave with you as a committee to get back to us. We get requests for ties so we will probably be having a look at the possibility of a shop item of some kind. But if you also would like to look at the possibility of a member's tie, by all means let us know what you would like.

**Mr Mills:** Maybe I am from another era but I like to think of things like that. It helps to introduce you, and people say, "I don't think people would wear a particular military tie because they would be embarrassed that they are going to be asked questions they couldn't answer." I think it would be a kind of fraudulent representation if you did that. I would like to think that would be the same way, that they would be rather exclusive because otherwise you will not perhaps be able to explain why you had it on.

**The Vice-Chair:** Would the committee like to have the tie referred to the subcommittee the same as the pin? How do the committee members feel about that?

**Mr Owens:** It sounds fine, Madam Chairman. Do we need a motion to move that or we will just move it into subcommittee discussions?

**Clerk of the Committee:** If members are agreed, then it is as you choose.

**Mrs Speakman:** Once again, it is a slightly different situation. We are trying to develop, at the assembly's expense, a pin that is unique to the members. The tie situation is two: one, we are looking to develop something for

sale; and, two, if the members would like something developed for themselves, it would be purchased by the member, so it is a slightly different situation.

**The Vice-Chair:** So am I hearing that we can refer the pins to the subcommittee but not the ties? Is that what I am hearing?

**Mr Mills:** Both.

**The Vice-Chair:** Okay. Would somebody like to make a motion to that effect?

**Mr Mills:** I move that take place.

Motion agreed to.

**Mr Mills:** I would just like to go on the record that though I am not on this committee as a member, I would certainly like to come back as a guest if I am not going to be permanent here and have a look and discuss the tie item further at a future date.

**The Vice-Chair:** Thank you very much for coming and bringing your—

**Mr H. O'Neil:** We still have a couple more items.

**Mrs Speakman:** I have one more.

**The Vice-Chair:** Yes. We have Barbara Speakman here to speak in regard to dry cleaning. Thank you very much for coming, Karyn.

**Mrs Leonard:** Thank you.

**Mrs Speakman:** All I have on the dry cleaning is a status report. We are developing currently a spec to go out to various dry cleaners to bid on the privilege of coming in here with their dropoff and pickup dry cleaning spot. When I have a proper spec I will come back and circulate that to you so you can see what it is we are asking of them.

**The Vice-Chair:** Okay. Mr Deshmukh, would you care to come to speak about banking machines, please? By the way, thank you very much, Mrs Speakman, for your presentation.

**Mrs Speakman:** I will stay because I am also involved in the banking machines.

**Mr Deshmukh:** What we have currently installed in the way of a banking machine is that the Royal Bank of Canada currently supplies and services what is normally characterized as a Cash Counter automated banking machine in the Legislative Building. It is located on—what do you call that?

**Mrs Speakman:** The east basement lobby, I guess.

**Mr Deshmukh:** It is just near the elevators as you go down before you get into the tunnels. That is called an Interac system and the machine is serviced weekly. Actually, there is no cost to the assembly on that particular one.

If there is an intention to go ahead with a full-service bank machine, there are considerations down here. All the banks indicate that they are responsible for installation costs. That is the first thing. All banks would like the location of the banking machine to be moved closer to the cafeteria, dining room and the mail room, somewhere that is accessible.

**Mr Mills:** It makes sense.

**Mr Deshmukh:** Yes, where they could get business too. That is something you would have to consider.

The other one that is important is, none of the banks actually thinks it is a viable option per se. They do not anticipate much business from this machine. What they have said to us when we solicited input from all the five banks was essentially that they anticipate about 50 to 100 transactions per day and it would cost the assembly around \$1,600 per month to subsidize. If the transactions exceeded 300 per day, then it would not cost the assembly anything.

The other thing that is worth noting on this is that even if we get a full-banking machine, we will not have the deposit facility for all five banks, presuming the people are banking with all five. It will be only for one particular bank.

So essentially the bottom line is as we set it down there. The full-service bank machines can provide full service only to holders of accounts at the bank represented by the machine. Deposits to any one full service would represent only 2% of the transactions and cost about \$1,600. That is really the survey that has been brought to the committee. I believe the committee wanted some details on this some time ago.

**Mr Mills:** I see you pointed out in here that within a block you have all the services you want anyway.

**The Vice-Chair:** Face the mike, please.

**Mr Mills:** I thought I was just talking ad lib. I should have put my hand up and got on the list. I think most people need at least a minimum daily dose of exercise and I do not see particular hardship in—in fact I look forward to it—going over to the one on Wellesley Street.

To subsidize it, and it is going to cost \$1,600 to do that, I cannot go along with that. I do not think it is necessary. Who asked for this?

**Mrs Speakman:** This committee did.

**Mr Mills:** Oh, I see. I should not be speaking, because I am a guest here.

**Mrs Speakman:** They asked us to investigate the feasibility because it is only a Cash Counter, but in fact even the \$1,600 would only subsidize the banking machine for one set of accounts.

**Mr Deshmukh:** It will not cover everybody.

**Mr Mills:** My account is a Johnny Cash machine, and this will be absolutely no good to me.

**Mr H. O'Neil:** I have to agree with Gord. I think it would be a wonderful idea to have a machine where we could go and get cash or make deposits, but the problem is going to be, if the Bank of Nova Scotia is the one that gets the contract and I belong to the Bank of Montreal, it is not going to do me any good, and to put in a whole bunch of them, \$1,600 times the number of banks, as Gord says, we live close to a bank or we come from a town where there is a bank. I think it is just too expensive and would not serve all the needs. We should just forget it.

**The Vice-Chair:** I think initially some of us just did not know our way around maybe and did not know what to do for a bank, so I think we have all learned a lot more.

**Mr Owens:** I think there was a lack of understanding of how the bank machines work. As Hugh says, it does not matter. I am at Toronto-Dominion, so what are you going to do? Are you going to put in five different bank machines so that we can access our particular branches? That is out to lunch.

**The Vice-Chair:** Initially it was more for deposit than it was for withdrawal. Some of us were going around with cheques in our pocket and did not know what to do with them.

**Mr Owens:** I could not go to a Royal Bank machine and deposit my cheque. It does not accept it. I can only withdraw. The only place I can deposit is at a TD machine. It would just cost too much money.

**The Vice-Chair:** Is there any further discussion on this matter? Is there any other business the committee wishes to discuss? If not, we stand adjourned until the next meeting, whenever you are notified.

The committee adjourned at 1700.



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## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

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**Substitution:** Mills, Gordon (Durham East NDP) for Mrs Mathysen

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CA2 ON  
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Government  
Publication



M-18 1991

M-18 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 25 September 1991

# Journal des débats (Hansard)

Le mercredi 25 septembre 1991

Standing committee on the  
Legislative Assembly

Broadcast and Recording Service

Comité permanent de  
l'Assemblée législative

Service de télédiffusion  
et d'enregistrement



Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
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Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 25 September 1991

The committee met at 1537 in room 151.

### BROADCAST AND RECORDING SERVICE

**The Chair:** Seeing a quorum, I call the standing committee on the Legislative Assembly to order. The item for business in front of us today deals with the use of the parliamentary channel. We had three requests. Request A has been withdrawn, which leaves requests B and C, and we will tackle request C first. Would Bill Somerville come forward and explain the request.

**Mr Somerville:** This is a request by the Ministry of Intergovernmental Affairs to televise the official welcome to Ontario of the royal visit of Prince Charles and Princess Diana. They are due to arrive in Sudbury on October 22 at approximately 12:15. In the past, other royal visits which we have broadcast on the satellite have happened at Queen's Park here, the last one being by the Queen Mother, and before that, Prince Andrew. This is a request for a similar type of access to the satellite for probably 25 minutes while they are officially welcomed to the province.

**Mr H. O'Neil:** Is that the only coverage they would like, in other words just the arrival, or had you planned to maybe televise some of the other events too?

**Mr Somerville:** This is the only request we have received. I believe they are televising other events, possibly one in Kingston, but this is the only access they have asked to the transponder, being that they would like to broadcast the arrival through the province.

**Mr H. O'Neil:** Are any of those people here today? Are any of the people in the—

**Mr Owens:** Royal family?

**Mr Somerville:** No. The only person I would have liked to have come would be Larry Kent, the communications director of Intergovernmental Affairs, who sent the letter to me. But no, these people are from the other request, the B request.

**Mr Sterling:** Who will be meeting them?

**Mr Somerville:** The official welcoming party, at the moment as far as I know, is the Premier and the Lieutenant Governor.

**Mr H. O'Neil:** Will there be any oaths taken at all while they are there?

**Mr Somerville:** The service we have been asked to provide on the satellite is the arrival outside Science North, which is the official welcome to the province.

**Mr Sterling:** I have a great deal of difficulty with this proposal for a number of reasons. My primary reason is that our TV system here is an electronic Hansard first and foremost and only for that reason. We have from time to time allowed it to be used for other things, but October 24 is on a Thursday. We will be having private members' hour

before that. It will be broadcast at that point in time. So it will take almost to 12:15, maybe 12:05, 12:10, depending on whether there is a vote. Second, if in fact the royal couple is late, you could get into the period of the introduction into the Legislative Assembly at 1:20 or 1:25. If we granted this and there was some problem with the arrival of the people, I think it would be difficult to say, "We are going to cut you off," just as they were arriving at 1:25. I would rather they find some other means of broadcasting this. The government has a television network, TVO, and I think that would be the most appropriate route for it to take on this.

**Mr Owens:** Looking at the memorandum to our Chairperson from Mr Somerville, is that with respect to your concern around late arrivals, that we provide Mr Somerville with some direction? I have no difficulty in supporting the use of the satellite for this purpose on the proviso that if late arrivals are an issue, we do switch to the regular parliamentary session.

**Mr Sterling:** I am not sure that is possible. Once you are hooked into a system, you are hooked into a system. When do you make this decision. At 1 o'clock or at 12:55 or whatever? People who will be watching are going to be much more interested in watching the royal visit than in me giving a statement at 1:30. But the fact of the matter is that this is a parliamentary channel and there is possible conflict.

**Mr Owens:** The issue that was raised by your party after the decision was made with respect to the oath to the Queen was that you are a party that supports tradition. The visit from the royal family is part of that tradition and it is for that reason that I clearly—

**Mr Sterling:** The debate here is that the Legislative Assembly pays for the expenditure of funds for this TV channel. It is not the government's channel, it is the Legislative Assembly's channel.

**Mr Owens:** I understand that.

**Mr Sterling:** There are two issues here. I would object even if we were not sitting that day because this is not a channel for the Premier of the province to be on as the leader of our government. This is a channel to show the debate of the Legislature and that is it. If the government wants to hire the TV channel for these purposes, etc, then that is fine and dandy, if it wants to do it that way. I think there are two complicating facts here, but I object to it on both grounds. My party has been consistent on all issues save and except for charities, in terms of running a charity fund-raiser, and the Indian band up north for a short period of time on Sunday afternoons. That has been our consistent position. Every time there is a request by a government to run basically a government show, we have said no and we will continue to say no.



**Mr H. O'Neil:** I do not agree with you. The thing is, I think there are only so many times in history that a royal family visits a province and a country. I think we have to make some sort of allowance, even if we postpone our own coverage for a short while to get them on the channel. There are a lot of people who would be very interested in seeing that arrival. In fact, I guess I would go even a little further. I would say for the royal visit, within reason again, if we had to postpone question period for half an hour—I do not think we will; they are usually on time—or if there are other circumstances whether in Kingston or Toronto that the channel wants to carry, I think it is great that we should give that type of coverage. I do not see it as being just coverage for the government. I think it is coverage of something that is very dear to this province and this country. I would support the request that is being made by Mr Kent on behalf of the royal visit.

**The Chair:** Mr Somerville, just to clarify a couple of issues, you came forward with this request to the committee here this afternoon to get some direction and confirmation that the broadcast of Parliament would basically take priority over that of the royal visit, so it would not begin until the end of private members' hour and it would end prior to the beginning of question period. Is that correct?

**Mr Somerville:** It is my understanding of the use of the parliamentary channel. I would like that confirmed. Also, does the committee approve the use of the satellite transponder for transmission of this royal arrival?

**The Chair:** So there are two issues.

**Mr Somerville:** Two issues, yes.

If you do, and if it is late, do you want to keep the royal visit on the air and delay the Parliament? As you know, the two previous royal visits we did put on the satellite. The arrival was at Queen's Park and the Parliament was delayed. The Parliament was recessed in fact until the royal visit was over to allow members to attend it. These items never arose before.

**Mr Cooper:** The point here is that this is going to take place at the airport, though. Right?

**Mr Somerville:** No, at Science North.

**Mr Cooper:** Oh, Sudbury. Right. Once you start it, is there any way of ending it?

**Mr Somerville:** Oh, yes. It is very simple technically to come back to the Parliament here.

**Mr Phillips:** What has been the past history on this sort of thing? Is this something we have always done?

**Mr Somerville:** On the two previous visits by the royal family, as I say, they have arrived at Queen's Park and we have transmitted the arrival and the welcome.

**Mr Phillips:** On the same channel?

**Mr Somerville:** On the same channel, yes.

**Mr Phillips:** We are just talking this time of the incremental cost of setting up.

**Mr Somerville:** No. The only cost involved is that they have asked me to act as a consultant. I have discussed that with the Speaker and he said any expenses involved they would pay; they have agreed to pay. But all the costs

are paid by the Ministry of Intergovernmental Affairs. There is no cost to the assembly.

**Mr Sterling:** I have to tell you, this is taking a brand-new step, though. In terms of the other visits, they were ones where we as members were involved at the time. In this situation, we are saying that we are going to delay the Parliament of Ontario because there is some protocol event occurring out there in another part of the province. We cannot have our TV cameras, our electronic Hansard, here for our purposes. The main purpose of the installation of the TV system here in Ontario was for the purpose of an electronic Hansard. We are not a TV network. We are an electronic Hansard. That is what it is all about.

If you make this decision to go this way, you are not only making a decision to cover a royal visit in Sudbury or whatever it is, but you are also setting a precedent for what we will be asked the next time through. There are other alternatives. The province of Ontario has a TV network. All Bob Rae has to do is get on the phone to Bernie Ostry and say, "We want it covered." Why can he not do that? I do not understand. TVOntario has better distribution than our system, as I understand it. Does it?

**Mr Somerville:** TVO broadcasts over the airwaves as well as satellite communication. Yes, they do have a bigger network than we have.

**Mr Phillips:** I have a lot of sympathy with Mr Sterling's concerns, primarily around precedents and what do we do the next time and all of those things. I just wondered, have we approached TVO? I was just reading these guidelines, that we have written permission and enter into an agreement with TVO for the use of TVO's—has all that been done? Have we talked to TVO about whether it would be more interested in—

1550

**Mr Somerville:** No. I spoke to TVO about the technicalities of switching over to Sudbury and then coming back to the Parliament here—technically, we can handle that; we have no problems with that—but I certainly never approached TVO to get involved in this broadcast or televising the event, no.

**Mr Phillips:** Is that one thing we might do?

**Mr Somerville:** I would be reluctant to do it. I am consulting with the Ministry of Intergovernmental Affairs; I am not producing the thing as such.

**Mr Sterling:** I have a concern on protocol for the government, when the Minister of Intergovernmental Affairs comes to the administrator of our television and says, "Can we have your TV station?" I understand why they do that. It is because it is less expensive for them to do that than to go and buy it from TVO or to repay them. Why gum up your own network when you can gum up our network, if you want to look at it like that? But this is not the Ministry of Intergovernmental Affairs' network. This is the Legislative Assembly network, and its primary purpose is to provide electronic Hansard here in the province of Ontario. There is a chance that the 45-minute visit will not occur between 12:15 and 1:30 pm on Thursday, October 24. I think there is a very good chance that would happen.



Notwithstanding my United Empire Loyalist roots of 200 years in this province and in this country, and being very much an avid monarchist, that is not the issue that we are talking about here.

**Mrs Marland:** I am apologizing for being a few minutes late because of something I did not have any control over, but I just want to place on the record that I share totally the concerns about this request that have been stated. I guess the irony is that when the people of Ontario turn on their television stations for the evening news broadcast, of which there must be any number, perhaps seven or eight, accessible even to five million people in the greater Toronto area to start with, when you look at the number of evening news broadcasts there are between 5 pm and 7:30 and then again between 10 pm and midnight, I think the public will have ample access to the coverage of the visit of Their Royal Highnesses the Prince and Princess of Wales.

Nobody will look forward to that coverage more than I will, but I am quite sure that those people in this province who are interested and appreciate their access to their government and what the business of the government is through their electronic Hansard service will know that they do not need to miss any aspect of that during the day because they will get this coverage later in the evening.

**Mr Owens:** I guess I have some concerns about what has traditionally, or from what I have seen since I have taken membership on this committee, been a non-partisan approach to issues and that approach is clearly being compromised today with the insinuation that this is being used by the Premier as a Premier's TV show and the vehicle for the Ministry of Intergovernmental Affairs.

I think the suggestion that was made with respect to using the time that is not taken up by Parliament—if there is a delay in the visit, then the parliamentary proceedings take priority—clearly addresses the issues that the members opposite are getting at without the insinuations of partisan politics in this issue.

I have some concerns that we are passing up what I see as an opportunity to expand the broadcast of the visit beyond the regular television networks, and I think that we are obliged to use the technology that the taxpayers have paid dearly for to whatever good purposes that we as a committee can find for it. I think this clearly falls into that category.

**Mr H. O'Neil:** I have tried to see what the Conservative members are driving at, but again, I think we have a special occasion here. We have had visitors from other parts of the world where we have had them as part of our TV coverage within the House. We have done other things when we have had other royal visits where we have postponed the House coming into session until that happened. I think it is a very special occasion. I think we could give a little bit of extra coverage to an event like this and I do not look at it as partisan. There may be some of us who are part of that visit in two or three parts of the province. I certainly am going to support this application or this request.

**Mr Sterling:** I want to say another thing as well. Mr Kent does not make any mention in here whether or not

CBC, CTV, Global or any other network will be covering this. They may very adequately be covering this arrival of the royal visitors.

I want to also indicate that if members of this committee would like to read Hansard back in terms of history, with regard to this debate when it has arisen from time to time, our party objected to the then-Liberal Premier using electronic Hansard as a focus on the giving out of Ontario medals. As a result of that, the program was changed so that all three party leaders were present when the Ontario medals were presented, as being part of the Legislative Assembly, the Ontario medals coming from the Legislative Assembly and not just from the government of Ontario.

There was a compromise made, and that was why that particular process went on. From time to time, members had been less vigilant than I am in terms of being very jealous about the ownership of the electronic Hansard, but it is so easy for the government to come along and say, "We have wonderful uses for this." You know, it slides from royal visits to other kinds of uses of the TV network.

As I say, if they want to buy the services, if they want to buy and pay for these things, that is fine and dandy, but I do not understand why the Legislative Assembly budget should be paying for these kinds of services. That has been our consistent position. Quite frankly, the past Liberal majority would respect the objection of any one of the three political parties to the use of the electronic media. It would never come to a vote.

**Mrs Marland:** Mr Sterling's final sentence was just the beginning of my comment. I think what is significant here is that when we have had exceptions to the normal practice, it has only been with unanimous consent of all three parties. I stand to be corrected, but I think the first and only non-parliamentarian to address our Legislature was Bishop Tutu. It was in the Legislature, and it was with unanimous consent of all parties that this exception was made.

I think what we are looking at here is another exception, and perhaps from time to time in everything we do, there may be exceptions in the interests of members that we can all agree on, but I do agree with Mr Owens very much that the Legislative Assembly committee should be the least partisan committee of any of the standing committees of this House. I also agree, although I am a fairly new member on this committee—the same as Mr Owens—that we have been very fortunate because this has continued to be a non-partisan committee.

1600

If we are looking at the interests and therefore the responsibilities that we have in looking at the interests of our members of this Legislature, it better be non-partisan, because we are looking at the whole functioning of this place, not just this committee room today, not just the chamber, the House, but this entire precinct, and our responsibility, I would suggest, is a very serious and very grave one. I think the only way that decisions can be made is if we have unanimous consent to do something which is the exception to the practice, no matter what it is. We are talking about a specific example today, but I hope we do



not get into a situation where it is a numbers game, and I hope that we respect the rights of all individuals in the House.

I may give you as an example the fact that we dealt very briefly with the subject of opening prayers with our new Speaker, and as far as I am concerned, he has been exemplary in his position on that subject because, as a very fair Speaker and an even more fair individual and gentleman, he has taken that issue under advisement because there was not unanimous agreement about a change.

I am hoping that this afternoon we can set an example on this committee that unless it is unanimous we do not make a change, because there may well be people on all sides of the House, whom we are sitting here as representatives of, who do not agree that this particular service—which is a service for the members, and through the members, to the people of this province, regardless of who the government is and regardless of how many seats are on one side of the House or the other. I really hope we will not be reduced on this subject to making it a vote; that if it is not unanimous, we will decide to set aside the request without a motion.

**Mr Owens:** Mr Somerville, what is your sense of the timing on this, other than you need an answer as soon as possible?

**Mr Somerville:** I think the timing is crucial. There is very little time between now and October 24. I have already visited Sudbury once when the representatives of the royal household were there and we went through the arrangements. I do not think there is much time to defer a decision. If the committee or the assembly does not want to grant the use of the satellite transponder, then the Ministry of Intergovernmental Affairs would appreciate being notified quickly.

The television and the other arrangements are going ahead at the moment, as far as I know, so it is only the use of the transponder and the access to the transponder.

**Mr H. O'Neil:** Again, maybe what we may have to do, or maybe what we should do, is turn it back to each of our leaders' offices to let them make a decision, but I do not go along with you, Margaret. You are saying if you do not get your way, in other words, if two or three of you vote that you are not for it, that we are going against the tradition of Parliament. We have put things to a vote here before, and I do not think you should put it that you either get your way or it does not go on.

**The Chair:** If you could address your remarks through the Chair.

**Mr H. O'Neil:** I think some of us would like to have different opinions, and they can be very justified and everything else. It may be that we could get it clarified by each of the leaders' offices and take it from there, but I do not like being—

**The Chair:** Mr Sterling?

**Mr Sterling:** I have already clarified with my leader. Just prior to the meeting I had a discussion with Mr Harris and he is fully supportive of the position I have taken.

There is another problem here, that if, in fact, the situation goes beyond 1:30, the assumption is that there is going to be

unanimous consent to postpone the starting of the House. I am not sure you are going to get unanimous consent on that basis, if, in fact, this committee breaks with the kind of tradition that we have taken. So the dispute does not end here.

**The Chair:** Again, for a point of clarification, it is my understanding that broadcasting would not begin until after the proceedings in the House ended for private members' hours. Broadcasting would finish at the time routine proceedings would begin, is that correct?

**Mr Somerville:** That is my understanding of the guidelines I work under. I would just like the support of the members to pull the switch if, for whatever reason, the royal visit was late. I do not want to have to be making a decision on the day. I understand my mandate of the parliamentary system and the broadcast of such takes precedence over any other item.

**The Chair:** That is my understanding too—that the broadcasting of parliamentary proceedings takes precedence over any other issues. Is this correct?

**Mr Somerville:** That is my understanding too, yes.

**Mr Owens:** As things move forward on that day and there is a possibility of delay, is there not a way of creating some kind of a blurb to flash in front of the television at some point before the switch-over takes place, to inform the folks out there watching that, in fact, a switch will take place at 1:30?

**Mr Somerville:** Yes. Technically we can put notices up on the screen.

**Mr Owens:** Whether it makes good television or not, I do not know.

**Mr Somerville:** The technicalities are very easy to do correctly, so that the viewer knows what is happening. If the visit is late, then we come back to the parliamentary opening at 1:30.

**Mr Sola:** One of the problems with that approach is if you create the expectation and then just as the plane touches down you say, "Sorry, folks, we are switching back to Queen's Park," you would be creating a much worse situation than not allowing it in the first place. It would be similar to following the World Series with the Blue Jays in it. You get to the seventh and final game and it is rain-delayed, and the television station tells you, "Sorry, folks, but we are going back to regular programming." It does not matter whether they decided to go through with the game or not. The same sort of hullabaloo you would get in that situation, you would get with this. If people are watching the TV screen in order to see the duke and duchess, and at the moment that they are arriving you cut away, you are creating a worse problem than by not even presenting them with the opportunity to see them. I would suggest that if that is a possibility, we not grant the exception.

**The Chair:** In the interests of non-partisanship in the committee, I wonder if it is possible to record the arrival of the royal couple and rebroadcast it at a time when the House is not sitting. Is that possible?

**Mr Somerville:** Yes.



**Mrs Marland:** It is not as though there is not another alternative. It is not black and white. It is not that we are saying, "Not on our parliamentary channel." The people of Ontario have ample opportunity to see this visit. As I have already said, I will be one of the people who will be rushing home to see it. If we feel there should be an opportunity for those people who fortunately are home during the day to see it live, as they arrive, I cannot understand why it cannot be scheduled through another network, especially the one that is owned by the government. So you have to wonder if there has been any discussion with TVOntario. Bill, am I right, does TVOntario reach further corners of this province than this network?

1610

**Mr Somerville:** Yes. Viewers can receive TVO without a cable service, whereas they cannot receive the parliamentary channel unless they are on cable television.

**Mrs Marland:** There is the answer. If we are really doing this out of the sincere intent to make this visit of their royal highnesses accessible to the viewing public around this province, would it not make more sense to put it on a network that is in fact giving greater numbers of people more access? They do not have to be cable subscribers, and people throughout the remote corners of this province also have access to it through TVOntario. If you look at some of the public service programming that TVOntario provides, there probably could not be an event that would better fit that qualification of public service broadcasting. Therefore, it makes even more eminent sense to say they do not need to use our channel in order to achieve the broadcast of this exciting event for the people of this province.

**Mr Cooper:** To clear up a few things that Mr Somerville said, will you be advertising this?

**Mr Somerville:** If it were decided to put it on the parliamentary channel, yes, I would promote it and say, "Watch the royal visit on the parliamentary channel."

**Mr Cooper:** If it were delayed enough so that all we would catch is the plane touching down, but nothing else, you would not start it, right? You would not start it on the channel if we were going to have to switch back to Parliament?

**Mr Somerville:** That is why I would like the guidance of this committee.

**Mr Cooper:** That is one of the qualifications I would want—that you would not start it if it were delayed that much.

**Mr Somerville:** No, I think I would like the decision made now so that I do not have to call the Speaker and say, "Can you delay the House for five minutes?"

**Mr Cooper:** That is one of the concerns—that we would not delay the House.

**Mr Somerville:** Right. And that is the major concern I have. Although I have been assured by the people organizing this they are never late, but—

**Mr Cooper:** You know that happens, right? Mrs Marland was saying we could watch it on the news. Nowadays, people like to watch things live and they do not

really like to put off until news time. That just seems to be my impression, that people would rather see it live. We cannot count on somebody else doing it. We are broadcasting at that time. It is just that we would be switching up to Sudbury at the time.

**Mrs Marland:** In 1986, the Duke and Duchess of York opened the Mississauga new city hall. In levels of importance, that visit and event was not as important as this. He is to be the next King of England. We are looking at an example where that opening of the Mississauga was televised, so I think on your question, Mike, about live coverage at the time, it is probably quite possible that there would be live coverage at the time. What I am saying is that there are a whole lot of elements here over which, no matter what decision we make, we have no control. Air traffic controllers, for one thing. Let's give an example of weather—

**Mr Sterling:** Have you ever flown into Sudbury? Sudbury is one of the worst airports for adverse weather.

**Mrs Marland:** There can be any number of reasons for the timing in the schedule to be interrupted or delayed. If our wish is that the people of Ontario really get to see this visit, then why do we not encourage arrangements to be made where they have more assurance of that happening through a network that can allocate the time? I would suggest the TVOntario could be that vehicle because it can have other programs in the can, as their expression is used, where it can pull a film or a video and show something as a time-filler while it is waiting for any delay or any change in the schedule.

The situation Mr Somerville is in is obviously impossible. If there is a delay through any undue cause, we cannot leave him in the position where he is on the phone to the Speaker saying, "You've got to delay the start of the House." This discussion is getting pretty ludicrous and pretty silly. I would like to move—

**The Chair:** If you could hold the motion, I will just hear the final two speakers, Mr O'Neil and Mr Owens.

**Mr H. O'Neil:** I was going to suggest that maybe Margaret could call Bernard Ostry and set it up for us. Or we could always declare a holiday on that date, because the Legislature is not sitting, for the whole province and all the kids.

**Mr Owens:** I was just going to suggest, in the interest of keeping this committee as non-partisan as possible, that what we should clearly do is refer this issue back to the Speaker to seek out all the other alternatives and to provide clarifying information, as we may deem necessary.

**The Chair:** It is the role of this committee to act as an adviser to the Speaker. It would be very helpful to the Speaker to forward all the comments from all the members of this committee to him to review and then make a final decision, hopefully based on the comments made by the members here.

**Mr Owens:** I move that.

**The Chair:** Is there consensus? All in favour? Consensus.



1620

**The Chair:** The second item on the same issue is a request from the new planning commission for Ontario and I understand that we have a number of witnesses to appear in front of the committee this afternoon. They are the chairman of that commission and two commissioners. If they would come forward at this time. If you could state your name.

**Mr Sewell:** My name is John Sewell. I am the chair of the Commission on Planning and Development Reform in Ontario. I have the other two commissioners with me, Toby Vigod and George Penfold.

**The Chair:** The normal procedure of the committee is that you take whatever time it is to make your presentation and, at that point, when your presentation is completed, it will be open and subject to questions from all committee members.

**Mr Sewell:** I am very pleased that we could get on the agenda today. I think the committee has before it the letter that I wrote to Mr Somerville, outlining our request. We are a commission that was appointed in June to look into planning legislation in Ontario. We are getting ourselves under way at this point. We would very much like to have a press conference next Wednesday that would be broadcast over the television channel.

We have been doing a fair amount of travelling already, even though we have not begun public public hearings but just trying to let people know what it is that we intend to do in the commission. We have been having lots of opportunities to speak to particular interest groups. We have been to places like Thunder Bay, North Bay, Sault Ste Marie, Stratford, Kitchener, Kingston and so forth, but what we would really like to do is have an opportunity to actually formally kick off the beginning of our work, the substantive part of our work. We think that if we had the use of the television channel it would help immeasurably. The focus will be the newsletter that we are starting with—and we want to inform people about this so they can get on a mailing list—which talks about the kinds of approaches we think should be taken and the kinds of consultation we would like to do.

There are two reasons why we would like the use of the channel. The first is that we want an opportunity to speak directly to people so they get some sense as to what we are doing. We have no problem getting normal publicity. We do it all the time. For instance, the three of us were at the Urban Development Institute luncheon today giving a speech. We will be all over the news tonight. That has happened in most of our appearances. But in fact they are situations where people read about it in the newspaper and whatever happened to be said at that point is what people pick up. We would like an opportunity to say to people in Ontario, "Here's what we're about," because we are not a national story and we are not quite a local story; in fact, it is a province-wide thing that we are trying to do.

We can get through very easily to interest groups and we are doing that, whether they are developers, whether they are environmentalists, whether they are planners, whether they are local politicians, and we have spoken at

conferences of all those people. We see the television channel as a chance of getting through to the rest who do not consider themselves part of those special interest groups. We think the use of the television channel would help immeasurably.

The second reason that we would like to use it is because we think this is a fair opportunity for journalists from throughout the province to ask us questions at the press conference. We can easily hold a press conference here at Queen's Park and get the Queen's Park journalists to ask what they want. Using the television with direct phone-in means journalists from throughout the province who are not able to come to Queen's Park, who know about a development issue that they are concerned about in their municipality, will in fact be able to directly ask us a question at this press conference. We think that is really important, not only for us, so that we are getting a sense as to the kinds of problems out there that we may not be responding to unless we hear those questions, but also to those journalists so in fact they can make some link with us and make sure they are ensuring that we are dealing with the kinds of issues they think are important.

So there are the two main reasons why we think the use of this will be extremely beneficial to people in Ontario. They are the ones we want to speak to on this issue, and we think this is a really good use of that facility to do so. That, I think, in simple terms is our request. Toby and George might have things they want to add.

**Ms Vigod:** I was just going to reiterate, I think first of all we are a province-wide commission and the matter we touch on is of broad interest to people everywhere in the province. As John has said, this would give us an opportunity to reach people we otherwise would not be able to deal with. It is certainly a broad provincial interest.

**The Chair:** Just before we begin, a point of clarification: This issue was brought to my attention some number of weeks ago. Originally you wanted to do the broadcast on September 25. I felt, as Chairman of the committee, I could not make that decision. That was up to the committee to make that decision. So at that point I said, "No, it was up to the committee to do that," and that is why this issue is here today.

We will now open it up for questions. I will take a question from each member who wants to ask a question before I go back to that member for a second question; I would like everybody to get in first. Mr Sterling.

**Mr Sterling:** What was the exact date you were aiming at? Is it in the correspondence?

**Mr Sewell:** Yes, because we were hoping that we could do it this morning in fact, except the Chair indicated that he wanted to come to committee, so it would be Wednesday October 2, in the morning.

**Mr Sterling:** Who appointed the commission?

**Mr Sewell:** Mr Cooke appointed the commission, as I understand it.

**Mr Sterling:** It is purely a government commission?

**Mr Sewell:** I do not know. I know we have been appointed and we are an independent body and we have got



our own opinions and we are not tied to anybody. We are not having politicians—

**Mr Owens:** Point of order? The line of questioning is out of order in—

**Mr Sterling:** No, it is not.

**Mr Owens:** —the context of the conversation around the use of the television link-up. It has absolutely nothing to do with how that commission got here, who made the appointments. I would request the member continue with the topic that we are—

**Mr Sterling:** No, I think it is important to understand how people are—

**The Chair:** On the point of order, Mr Sterling?

**Mr Sterling:** Yes.

**Mr Owens:** This is not the committee on government agencies.

**The Chair:** Mr Owens, please.

**Mr Sterling:** What I want to establish is where the commission is coming from and who it is reporting to and I think that is important.

**Mr Phillips:** Just on the point of order, I think Mr Sterling's line of questioning is bang on actually and I think he is trying to deal with a matter of principle. This is legislative champ, and I think he is trying to determine if this is a legislative committee we are dealing with or a government committee. It is a matter, I think, of significant principle and I think it is quite in order. Maybe the Chairman does not know it but one of the others might know it so I am interested in the question.

**The Chair:** On the point of order, in fact it is not a point of order, Mr Owens. I believe Mr Sterling is correct.

**Mr Sterling:** Were you appointed by an order in council?

**Ms Vigod:** Yes, an order in council under the Public Inquiries Act as an independent commission.

**Mr Sterling:** How many members are there in the commission?

**Mr Sewell:** Three of us.

**Mr Sterling:** Okay, fine.

**Mr Sewell:** Just let me define who they are: George Penfold is associate professor of rural planning, University of Guelph; Toby Vigod is the executive director of the Canadian Environmental Law Association, and I am whatever. But we do report to the minister and we see ourselves as being responsible to the people of Ontario.

**Mrs Marland:** Mr Sewell, could you give your title?

**Mr Sewell:** I am the chair of this commission. What else do I do in life? Well, I have done a number of things. We are all full-time in this for two years. In terms of the commission, our intention is to have a report in draft form that is available by the end of next year, which we will then hold public hearings on throughout the province.

We are going to hold lots of public hearings before then—expect to hold some later this year as an example, and we hope that we can give a final report to the minister in the spring of 1993. And we will then work hard to try

and ensure that in fact that becomes legislation. As I have explained on many occasions, our job is to find out what consensus there is about how planning should be done in Ontario and what kind of goals lie behind it. We believe, and we say it right in our first newsletter, "These days almost everyone is unhappy with the planning process in Ontario."

We believe that, and the question is: What kind of an agreement can we get among all the players to get on with things, to actually get some goals that we all agree with and then get a process that fairly does all the things that have to be done in terms of planning? Our job is a fairly tough one but we see it in terms of creating a consensus where everybody can say, "That's the kind of stuff that we should do." We do not believe everybody is going to agree on everything but we think that most people are going to agree on most things and that is the way we see our jobs.

**Ms Vigod:** If I could add, I think we have also said that we are committed to an open process. I think that is why the use of the parliamentary channel would put some meat to that, to say we are open and we are going out to all the people of the province to let them know what we are doing and to try to get them involved. So it is very much in line with the strategy we are taking.

1630

**Mrs Marland:** Are you going to be travelling extensively throughout the province?

**Mr Sewell:** We have already begun to do that, yes. We are doing that quite extensively, yes.

**Mrs Marland:** So you are going to be travelling extensively throughout the province in the next two years?

**Mr Sewell:** We have been doing a lot of it in the last couple of weeks and we are going to be doing—yes.

**Mrs Marland:** All right. You said it is necessary to have the use of the parliamentary channel for your press conference in order to reach media throughout the province and you have also that you are going to be holding extensive public meetings throughout the province. Well, I think there is a contradiction here, and I say that with respect, because I think if you are going to be travelling the province anyway—and you will obviously be announcing your schedule of where you are going to be when in local newspapers and so forth—at that point you are then inviting these people who have concerns with the planning process around the province to come before your commission.

I would suggest to you that it is somewhat redundant to request the use of our parliamentary channel, because you are going to be covering that ground. You are going to be holding public meetings; you are going to be travelling extensively. If it is simply that you want to reach the people of Ontario who have concerns about the planning process—and I agree there are a lot, both professional and non-professional; anyone who wants to try to do anything within the Planning Act as it exists today has a lot of difficulties, and we as a party have been asking to have that planning process streamlined and expedited, while protecting the environment, for the last six years that I have been at Queen's Park—I think the publicity you are



looking for to tell the people of Ontario what you are going to do can be very, very easily addressed by simply having a member's statement in the House.

I think if your concern is how do you reach these people without having the world come into your press conference, I would suggest you are going to be meeting that need as you travel. Maybe the day of your press conference you could have a member in the House make a statement about your commission and your program for the next two years.

**Mr Phillips:** Is this questions and then we will have a chance later for comments? Or should we—

**The Chair:** We are going to discuss this in closed session.

**Mr Phillips:** Just while the group is here, the challenge I think we have as a committee is a matter of principle, as I said earlier, and that is that you are a government-appointed body, and that is fine. It happens all the time. This is the legislative channel, which performs a different role from the government role and so I think, just to kind of tip you off, I will have some significant difficulties voting in favour of it, but it will be a matter of principle.

I do not doubt the importance of your work and I do not doubt the need for you to get out and do all those things. But I just do not see a way of drawing any lines at all if this goes ahead. Every single government-appointed board would want, and quite understandably, exactly the same opportunities. I think at the end of the day, once we start this, we are into just an endless stream of them, understandably. I just do not think that is the use for which the legislative channel was envisioned, or the funds were allocated, or the basis on which we can defend the allocation of those funds—nothing to do with very important work, and I wish you the best of luck.

**Mr Sewell:** It is interesting our being categorized as a government committee. I do not think the people we have been working with have seen us that way. In fact they have seen us, I think, as an independent inquiry and that is the merit that we have got. We are independent; we are set up under an act that says we are independent. I have difficulty with someone saying, "You're someone who is just a government person." I do not think that is the way the three of us see each other or anybody else sees us. They see us as an independent inquiry. That in fact is our basis, our constitution.

As I said, we might have to report to the minister, but in fact as Toby has made clear, we are an extremely open process, we expect everybody to know exactly what we are doing. We see ourselves as being responsible to the public, to the people of Ontario. They are the ones we are responsible to. If we do not make them happy, we are in trouble.

**Mr Owens:** I think what this commission of inquiry is undertaking is extremely important and that you, Mr Sewell, hit on an interesting point with respect to your use of technology and the idea of having reporters from smaller municipalities call in to ask you folks questions directly. I think that is an excellent idea because obviously you are not going to be able to hit—maybe I am making a gross assumption. Maybe you will hit every municipality,

small town, village and burg that exists in this province. But as my understanding of the newspaper business goes these days, I think the reality is that there are very limited funds and opportunities to send reporters, whether it is to Toronto or to neighbouring towns, for press conferences. They are stretched like any other business in this province these days. But I would like to applaud you for your creative use of technology to get the message out to people of the importance of this undertaking you are embarking on, and have no difficulty in supporting your request and understanding the fact that you are clearly an independent commission of inquiry and will report your findings in that manner.

**Mr Cooper:** To follow up on this whole process, basically you are not advertising that you are coming to see these people. You are advertising that the commission is being launched and you want them to call you so that you will know whom to go visit. Is that correct?

**Mr Sewell:** Yes, and so that they can get on a mailing list so that we are ensured that they are going to be getting a newsletter which talks about what we are up to, and we are going to be publishing it every two—

**Mr Cooper:** So this is a way of starting the whole process.

**Mr Sewell:** Yes, and it is getting through to a different kind of person than we were getting through to. For instance, we had to figure out how we could mail this out to as many people as possible. We have the mailing list of the Urban Development Institute; they gave it to us. We have the mailing list of the Ontario Professional Planners Institute; they gave it to us. We have the mailing list of the Ontario Environment Network; they gave it to us. Those groups are okay. We are worried about the rest of the world that does not belong to those groups.

**Mr Cooper:** This is what I was going to follow up on. Having travelled the province fairly extensively during the summer session on various committees, I found that through newspaper advertising a lot of people were not getting the message that we were coming and then at the last minute they would find out and could not get on the list for a presentation. So to start the process this way is much better and more efficient.

**Mrs Marland:** Mr Sewell, you have a lot of experience with municipalities and media and I am sure you would agree—with those lists you have just identified that you already have—that it would be equally simple to obtain the lists of all the media, print and local cable stations across this province, and the municipalities and the councillors, so you have within your means a very simple way of direct contact with all of these people.

**Mr Sewell:** Indeed we will be contacting them for the press conference, but we would like to give them the opportunity of asking questions to us live, right there. We have to face the cameras. We think that is a valid thing to happen. If we are trying to design an open process, what could be better than someone who might have an embarrassing question actually having the chance to ask it in public? That is the point. We do not have any problem in



getting publicity. I have never had a problem that way, and sometimes it has been costly.

**Mrs Marland:** And you are asking for one hour.

**Mr Sewell:** We would probably speak for 15 minutes, and then we will have questions. If you speak any longer than that you lose folks.

**Mrs Marland:** So you are saying realistically, to accomplish what you want to accomplish, how many people will be able to reach you in 45 minutes?

**Mr Sewell:** In terms of media, I suspect we might find we could probably deal with with 20 or 25 questions in that time.

**Mr Penfold:** There are two key points I would like to make. One is that in addition to the media we are really trying to provide an opportunity for the public to understand what we are about. The issues we are trying to deal with and review, the Planning Act and process, have a lot to do with openness and integrity. The second is that we have set ourselves a very rigorous schedule of trying to get information back to the House within two years, and making use of the best resources to access the public and the media is critical to our being able to accomplish that.

**Mrs Marland:** I am not questioning what you are trying to do. I have already said it is needed. I am glad you are there and going to be doing it and I wish you Godspeed and great success, but I do not wish to give you use of the parliamentary channel. For 45 minutes it is not going to accomplish very much for you anyway, but I wish you well in your work around the province.

**Mr Frankford:** You would have some process of filtering out that your calls came from accredited media or accredited reporters?

**Mr Sewell:** As I understand it, we would be telling the journalists throughout Ontario, "Here's the number to call when we're on air." If some of them happen to have said, "Here's the number; call," then I am not sure there is anything we can do about it. But we are trying to get the journalists to have that opportunity so they can actually say: "We've got this kind of development problem in Cornwall. What are you guys going to do about it?" They are the kinds of questions we would very much like to be able to deal with.

**Mr Frankford:** You certainly would be in a position to start sensitizing reporters all over the place both to what you are doing and what the approaches would be.

**Mr Sewell:** That is correct. I know just from the very recent visit to North Bay last week that there is a great big paper, the North Bay Nugget. It is a perfectly good thing but you tend to think, what about all the other places where people might be able to get some good background information?

**Mr Frankford:** You are seeking more than just advance publicity for meetings. You are really trying to educate and sensitize people.

**Mr Sewell:** Yes.

**The Chair:** Any further questions of the commissioners and the chairman? Being none, before we get into dis-

cussing the issue before us I thank the chairman and the commissioners on the Commission on Planning and Development Reform in Ontario for coming along here this afternoon and putting your request.

**Mr Sewell:** Thank you, Mr Chairman. Everybody will be getting one of these pamphlets in the next few days which talks about—

**Mr Phillips:** We need more paper, more paper.

**Mr Sewell:** Yes, I am sure, better reading.

The committee recessed at 1643.

1644

**The Chair:** I call the meeting to order, seeing that Bill Somerville has come back.

**Mr Sterling:** Mr Somerville, when I have a press conference it is not beamed out to all of Ontario; it just goes within this building. Is that correct?

**Mr Somerville:** Within the parliamentary precinct and to a few government buildings on the east side.

**Mr Sterling:** If I as a member said I wanted to do that, could I do it?

**Mr Somerville:** Technically, yes.

**Mr Sterling:** But have you ever done it?

**Mr Somerville:** Yes, we have. We broadcast the last election call by the Premier, and then the other leaders followed with another 20-minute release, so we have broadcast press conferences before.

**Mr Sterling:** When they were used by all three parties.

**Mr Somerville:** Yes.

**Mr Sterling:** Has any government agency ever been given the right to use the parliamentary channel?

**Mr Somerville:** No.

**Mr Sterling:** So we would be setting a precedent here?

**Mr Somerville:** Yes.

**The Chair:** My question is in relation to the cost. Would this cost the Legislative Assembly any money?

**Mr Somerville:** No. In my note to the members and to yourself I mentioned I would put a camera in the media studio. We have the camera and staff so it would be a matter of me scheduling someone to go in there. The equipment we have in the media studio is not broadcast quality. The camera you see in your office, that picture is not good enough quality to broadcast.

**The Chair:** Again, if there were a committee in this room at the same time, the committee would take precedence over this particular news conference?

**Mr Somerville:** That is my understanding of the guidelines I work under, yes.

I have discussed on the telephone with the Commission on Election Finances that it would like to use the parliamentary channel at some time in the future, in November or December. They are working on a proposal they would bring to the Speaker and to this committee through me. They are interested in using the channel to pass out their information, so there is another request. They may come to you next month or in December.



We also broadcast at one time one piece of information by the election office when it changed the Election Act. We broadcast that once. That was a Legislative Assembly process, in my opinion.

**Mr Sterling:** Just on the same subject, the Commission on Election Finances reports to the Legislative Assembly?

**Mr Somerville:** Yes, to the Speaker.

**Mr Sterling:** So it is a body of the Legislative Assembly.

**The Chair:** Thank you, Bill. The floor is open for debate. Any further questions?

**Mrs Marland:** What are we dealing with now?

**The Chair:** We are dealing with the request from the Commission on Planning and Development Reform in Ontario requiring BRS to supply one camera and cameraman, plus the co-ordination of the telephone lines and broadcast. That is basically the request from the commission.

**Mr Owens:** I would like to move that the standing committee on the Legislative Assembly grant the Commission on Planning and Development Reform in Ontario permission to use the satellite linkup and the legislative channel for its press conference.

**The Chair:** There is a motion on the floor. Is there any debate on the motion?

**Mr Sterling:** I move we put the question.

**The Chair:** That the question be put.

**Mr Owens:** I request a 20-minute recess to determine numbers.

**The Chair:** The committee stands recessed for 20 minutes.

The committee recessed at 1648.

1707

**The Chair:** I would like to reconvene the standing committee on the Legislative Assembly. Mr Owens, did you wish to say something?

**Mr Owens:** After some consultation with the Chair, I think the Chair outlined clearly that this request does not meet the criteria as set out and as has been applied to previous requests. It is therefore with some regret that I request my motion be withdrawn. The Chair will have some further things to say on the criteria.

**The Chair:** So the motion is withdrawn. Is that agreeable to the committee?

**Mr Owens:** Chocolate chip cookies would be nice.

**Mr Sterling:** Listen, if I had been wanting to play this in a political way, I would have forced the vote.

**The Chair:** The request from the Commission on Planning and Development Reform in Ontario is for use of the parliamentary channel. As we act as an adviser to the Speaker, we will be forwarding comments from the members to the Speaker outlining that request. The opinion of this committee is that it is denied because it does not meet the criteria as laid down. Is that agreeable to the committee?

Further to the whole request about the use of the parliamentary channel, it appears we have had three today, including one who could not come here today, and I understand there are a couple more in the wings. Is it

advisable that this committee establish another subcommittee to look at the criteria as established January 25, 1989, and see if we need to update them, add more stringent guidelines or whatever the case may be? What is the feeling of the committee on this suggestion?

**Mrs Marland:** A lot of work went into establishing the regulations and procedures for third-party access to the Ontario parliamentary channel and those regulations and procedures are barely only two years old. I think they have been working very well. They established the protection of the use of that parliamentary channel and they perpetuate the correct use, in my opinion, and I do not think it is necessary for us to establish a committee to look at them again. I think how you deal with all the requests is that if they do not meet the existing regulations and procedures, there is no further application on that request.

**Mr Owens:** One of the issues we need to address around regulations is, while I understand that a lot of hard work was put into the establishment of the regulations, I do not think that simply because something is two years old it does not mean that we cannot take a second look at it. If we look at what we are doing around the Freedom of Information and Protection of Privacy Act, it is only three years old but we are looking at reviewing it and making some suggested changes.

Just a question to the Chair: Are you suggesting that we establish a separate subcommittee or that the subcommittee that exists around the three parties now deal with the issue and report back to the committee?

**The Chair:** Whatever the wish of the committee would be, if the committee so desires such a committee be established.

**Mr Owens:** We have a subcommittee set up at this point, and to create a second subcommittee would only add further work on already overworked members. If we proceed with this, I suggest we keep it within the confines of the subcommittee.

**Mr H. O'Neil:** I think the comment Steve made is right. We have a present subcommittee and we have the whole committee. When you start looking at changes to the rules here, it is just as well we leave it as it is.

I might also say that I am pleased that Mr Owens withdrew his motion because we could have been into a possibly political situation here where, as Margaret mentions, rather than having sort of co-operation before this committee there might have been some people who would have seen that we were trying to politicize the TV channel. Whether that was the case or not, it might have been seen to do that, and I think withdrawing that motion was very wise.

**Mr Sterling:** If you wanted to look at the rules again, probably the best idea would be—I am just saying this because I went through the last experience, or the first experience; hopefully not the second one—that the subcommittee might consult with Bill Somerville and ask him where he thinks they should be strengthened or if they should be strengthened or if they are wide enough or whether there is a need to do it.

The other part was that when we were setting up the overall rules and terms of the electronic Hansard here at the Legislature, you tried to quantify a certain amount but you always wanted to leave a certain amount of discretion as well. Particularly on the commission coming in, it was clear to me that that was outside of the bounds of what has been allowed in the past. I cannot see, unless you are going to change the very fundamental concept of what the electronic Hansard is all about, that you are going to be able to permit the government of the day—regardless of which government—that kind of use of the legislative channel.

I think it is hard for government members, particularly in this instance, when you have a quality person like John Sewell chairing a very important commission—to have him and his people in front of the committee, giving him the hope by coming here perhaps that a positive decision would ensue out of that. Perhaps in cases where there appears to be—from looking at the existing rules—a real problem in granting it, it might be better, without having a witness here in the first instance, for the subcommittee to

consider it, so that you do not face the situation you did today.

I hate to say no to John Sewell and the other people because I think it is important that people submit and get to know that this commission is in place. Nobody can argue against that. But in terms of the principle, it is well established. It may be sort of a pre-hearing meeting with the subcommittee to go over it and say: “Can we really get to second base? Is this one where there is latitude in terms of the committee?” That might be a better way to handle it so you do not pull people in with the expectation that they are going to get a positive response or there is a chance of a positive response.

**The Chair:** I think you have made some good suggestions here this afternoon. Maybe we should refer this matter to the subcommittee and consider some of the points that have been raised here by the members this afternoon.

The committee continued in camera at 1717.



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Cooper, Mike (Kitchener-Wilmot NDP)

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Marland, Margaret (Mississauga South PC)

Mathysen, Irene (Middlesex NDP)

McClelland, Carman (Brampton North L)

Morin, Gilles E. (Carleton East L)

O'Neil, Hugh P. (Quinte L)

Owens, Stephen (Scarborough Centre NDP)

Villeneuve, Noble (S-D-G & East Grenville PC)

#### Substitutions:

Abel, Donald (Wentworth North NDP) for Mrs Mathysen

Christopherson, David (Hamilton Centre NDP) for Mrs MacKinnon

Phillips, Gerry (Scarborough-Agincourt L) for Mr Morin

Sola, John (Mississauga East L) for Mr McClelland

Sterling, Norman W. (Carleton PC) for Mr Villeneuve

Ward, Brad (Brantford NDP) for Mr Jamison

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M-19 1991

M-19 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Wednesday 9 October 1991

## Journal des débats (Hansard)

Le mercredi 9 octobre 1991

### Standing committee on the Legislative Assembly

Review of Freedom of Information  
and Protection of Privacy Act, 1987

### Comité permanent de l'Assemblée législative

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée

Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
Greffier : Douglas Arnott





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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 9 October 1991

The committee met in camera at 1558 in room 151.

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### REVIEW OF FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

DONALD ROWAT

**The Chair:** I call forward Professor Donald Rowat from Carleton University. Welcome. You have up to three quarters of an hour to make your presentation, but I urge you to leave some time for committee members to ask questions.

**Mr Rowat:** Thank you very much, Mr Chairman. It is a great privilege to be able to come to this session of your committee. I would like to compare the freedom of information laws in Australia and New Zealand and highlight some of the major differences from the law in Ontario. It will be a kind of overview of some of the major problems you may be dealing with, rather than detailed proposals for amendment to the legislation.

Your clerk tells me I have only 45 minutes and you have reminded me of that. As you know, professors are programmed to speak for exactly one hour. I will try to adhere to the famous old proverb of Confucius, that he who speaketh by the yard and thinketh by the inch deserves to be kicketh by the foot.

Perhaps I should preface my remarks by saying a little about my long interest in the Ombudsman institution and in freedom of information. The Ombudsman first got me interested in freedom of information. Since then I have written and edited a book about the Ombudsman. I have also edited a series of books of graduate student essays because I have run a couple of seminars on freedom of information at Carleton University.

I should also mention that I am more of a specialist on freedom of information than I am on privacy, so I am going to be focusing my remarks mainly on the freedom of information aspect of the law rather than the privacy side.

One thing I should mention, although perhaps most of you are aware of this, is that Ontario's Freedom of Information and Protection of Privacy Act is only part of a reform in the most advanced modern democracies in providing a right of access to administrative documents. There has been a recent spread of access laws throughout the most advanced democracies starting with Sweden, the other Scandinavian countries, Denmark and Norway, as early as 1970, then the United States in 1974 and the Netherlands and France. Some of you may not be aware that France is probably the biggest democracy in the world, aside from the United States, that has adopted a freedom of information law.

Then the Commonwealth countries came along, Canada, Australia and New Zealand, but not Britain. It is interesting that Britain, although it does have protection for personal privacy and control of data protection, has not yet passed a freedom of information law except at the local government level.

I think your clerk may have distributed to you at an earlier date a paper I prepared comparing the freedom of information law in Ontario with the law at the federal level, and in that I included some comparative comments on Australia and New Zealand. Then, when I was on sabbatical leave, I took a trip there in May 1990 and gathered further information.

The interesting thing is why should we be interested in what is going on in Australia and New Zealand? The thing I found is that there are some surprising parallels in the developments and the problems. I think probably it is for a number of reasons. One is that these countries are part of the Commonwealth and have a similar system of government. Of course, Australia has a federal system with very many interesting parallels to Canada.

It is interesting that five jurisdictions in these countries adopted a freedom of information law in the same year, in 1982, so it is a landmark year as far as freedom of information is concerned in the Commonwealth. In Canada, the federal government and Quebec adopted a law in that year; in Australia, the federal government and the state of Victoria adopted an access law; as did New Zealand in the same year.

A little bit later, the biggest state and province, Ontario and New South Wales, adopted laws in 1988 and 1989. So the provinces in Canada are a little bit ahead of the states in Australia, because we have a bare majority now that have a freedom of information law, but I think the Australian states may beat Canada because the other states are actively discussing such a law and are likely to adopt one within the next two or three years.

In general outline, the laws are very much the same. They use the main principles and exemptions and so on, but there are some important differences and I thought I would highlight these differences for you. I am going to focus on what seem to me to be the six most important differences: the systems of appeal they have adopted; the administrative appeal tribunals in Australia, which are worth special mention; the provision for the internal review system, that is, provision for internal review within government agencies that has been developed in Australia; the matter of fees; the extension of freedom of information to local government, and the protection of privacy data or the control over the use and distribution of personal information, if there is time at the end.

I will start with the appeal system. The interesting thing about the appeal systems in Australia and New Zealand is that they all had ombudsmen in all the states and at the federal



level in Australia and in New Zealand before they adopted freedom of information laws. So they all used the Ombudsman as the appeal body. Ontario had an opportunity to do this but decided to set up an independent commission instead.

I had a double interest in going there because I was interested in both the Ombudsman and freedom of information. The two subjects overlapped as far as I was concerned, so much so that I sometimes got confused about which one I was gathering information about. In contrast with Ontario and Quebec and the federal level, which have separate commissions, they all make use of the Ombudsman. That is one of the significant differences.

The second one is the provision for final appeals. Here is a really significant difference because there are new administrative appeal tribunals that have been set up in the state of Victoria and at the federal level in Australia and they have become the main avenue of appeal, at the federal level partly because of the Ombudsman's resistance. I think he felt overloaded. He had a skinny budget and felt that he should not take on this added responsibility. Another reason is that these administrative appeal tribunals gave binding decisions, like the commissioner in Ontario. Also, at first it was a cheap method of appeal, but you will see later that this has not turned out to be so at the federal level.

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These administrative appeal tribunals have been a very successful invention in Australia. I have become very interested in them because they deal with all of the administrative decisions, not just freedom of information, so that they are a new invention for purposes of maladministration and appeal against maladministration, and freedom of information is only part of their activities. I discovered at the federal level that this tribunal is a huge organization that has about 80 or 90 judges who meet all over Australia, usually hears cases one at a time and more difficult cases three at a time. There is also one in the state of Victoria, which was the first one in Australia to adopt FOI.

New South Wales, however, did not follow this example. It did not set up an administrative appeal tribunal and therefore appeals go to the district court, the way they do in the United States, to the regular court system. This was also true in Victoria before the administrative appeals tribunal was set up there.

New Zealand has also changed somewhat because the Ombudsman used to make only recommendations, but they have changed the system there recently so that the Ombudsman's recommendations on appeal become binding if they are not overturned by a cabinet veto within 20 days. This change arose out of the fact that ministers were vetoing some of the Ombudsman's recommendations, partly to avoid personal embarrassment. Opposition arose to this and so they transferred the veto to the whole cabinet and, as far as I know, there have been no vetoes since that time; the Ombudsman's recommendations are nearly always accepted and in effect become binding.

The third difference that I wanted to speak about is what is called the internal review stage in Australia. All three of the freedom of information laws provide for this internal review within a government agency, so there is an extra stage in the Australian system in which, if a person is

refused a request for a document, he appeals at a higher level within the department or agency. This is a formal stage that we do not have.

It is interesting that between a quarter and a half of the appeals that go to a higher level within a department are changed. Either they decide to release the full information or part of the information, so they vary the decision at the lower level. The percentage of cases that are reviewed is much higher for internal appeal than it is for the formal appeal system, that is, to the Ombudsman or the administrative appeals tribunal. It varies, but something like between 5% and 20% of all requests are appealed to the department or agency, whereas the number of appeals that go through the formal appeal procedure is less than 1%. You can see that it is a very important stage and most of the appeals go through this internal review system.

The fourth thing I wanted to mention is fees. Fees started off very low, and they have remained low in Victoria and New Zealand. There is also a provision to waive fees on account of financial stringency and in the public interest, and there is no fee for making a request in either Victoria or New Zealand, but it is not the same in New South Wales.

A more recent plan, which was brought in during a period of financial stringency, provided for a fee of \$30, and you have to keep in mind the Australian dollar is worth a bit more than the Canadian dollar on the international markets, so these dollar figures are even higher for us.

In New South Wales it costs \$30 to make the initial application. They even charge for the internal review, so it costs \$40 if you want to appeal to a higher level within the agency, but there is provision for a rebate of 50% for poor people.

The real problem has arisen at the federal level, because the federal government in Australia has raised the fee by stages. I think in the first year of the plan it cost requesters something like 54 cents to make a request and get their information. The federal government has progressively increased the fees until they are now \$30 and \$40, the same as in New South Wales, for a request or an internal review. It costs \$300 to take an appeal to the administrative appeals tribunal, and that started off at a low figure and has been increased to \$300.

This had the effect of shifting more appeals to the Ombudsman because it did not cost anything to take appeals to the Ombudsman. If it is going to cost you \$300 to go to the administrative appeals tribunal you are very likely to go to the Ombudsman unless you want a binding decision, in which case you would be willing to pay your \$300 and go to the administrative appeals tribunal.

The unfortunate effect of this has been to reduce the number of requests, so the requests four years ago—in 1985, that is going back more than four years—had risen to about 3,600, which is a pretty substantial figure in our terms, per year, and they dropped as a result of the increase in fees to 2,500 in 1988. I have not seen recent figures, but I suspect they have been dropping since that time.

That is the effect of increasing the fees in Australia. Also, the number of requests has been rather low in New South Wales because it started off with this hefty fee structure.



The fifth point I was going to mention is the extension of freedom of information to local government. As here, they started off without including local government. The scheme in Victoria in 1982 did not cover local government. They promised to do so but it was not done. But I noticed in a pamphlet they hand out that they say local government is presently governed by the freedom of information code, whatever that means. It means that, informally, the FOI guidelines are supposed to be applicable to local government, I suppose.

When New South Wales started its scheme in 1988, it extended access to personal information only to local government and so there is no right of access to general government documents at the local level. There is talk about extending general access to the local level in New South Wales, so that is a bit different than what happened in this province.

New Zealand started off without it covering local government, but extended it in 1987. That was five years after it began its plan. After interviewing people in New Zealand, I discovered that a very small proportion of their total number of appeals to the Ombudsman come from local government, only about 10%. The reason they gave me was that it was a fairly open system to begin with. But a problem arose because the legislation in 1987, which was separate legislation as it was here, applied to the meetings of councils and provided an opportunity for the councils to continue with closed meetings and only made the minutes of the meetings available under the freedom of information law. That is briefly the situation there.

Let me just say a few words about privacy. In general, the Australian and New Zealand laws provided for access to one's personal documents and the opportunity to make corrections as under our laws, but they did not include controls over the use and transfer of personal information. That was the big gap in the Australian and New Zealand laws, what is called fair information practices with respect to personal information.

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In 1988, the federal government in Australia passed a privacy act and set up a privacy commissioner, and this in a way overlaps the freedom of information law because he can also receive complaints about personal information. But the main objective of the law is to control the use of files—and it even extends to the private sector—particularly in the use of tax files held by employers in the private sector. It was also extended to private credit agencies, and that has caused a big controversy in Australia because there is such resistance to extending privacy protection to the private sector.

There has been a privacy committee in New South Wales for a long time, since 1975, with a kind of general mandate to study the problems of personal privacy and so on. They have issued a very interesting recent report that just came out in 1990. They have recommended a privacy and data protection act which would be somewhat similar to the one at the federal level. They say that their main reason is because the European commission has issued a directive which prohibits transborder transfers of privacy information unless a country has a law which protects personal data. They say this is going to injure trade of New South Wales

with the European countries. Also, they point out that seven of the European Community countries, including the United Kingdom, extend privacy to the private sector in many important respects. So they control the use of personal information by the private sector, especially in computers.

Another interesting thing is that they want the privacy commissioner to be advisory only. Their reasoning is that they think the privacy commissioner has to be an advocate and the commissioner cannot be neutral if he or she has the power to make binding decisions. So they come down in favour of the power of recommendation such as we have at the federal level in Canada.

Another interesting thing they mention, by the way, is that they feel that Ontario's act is stronger than the federal act in Canada and it is in many ways better than the Canadian federal law—with which I think I would agree—probably because it was drafted later and incorporated more advanced provisions.

Let me just then run down some conclusions that one can come to about these main differences between the Australian and New Zealand laws and our own. With respect to appeals, the big question is and has been for a long time whether the agency hearing appeals should have the power to make binding decisions as opposed to only recommendations, such as at the federal level in Canada or the Ombudsman.

Here I think the outstanding thing has been the success of the administrative appeal tribunals, which have pretty largely displaced the Ombudsman as the main appeal for citizens who have been refused access to information. One of the main reasons is that the administrative appeal tribunals hear far more cases and give far more decisions and therefore interpret the law much more quickly than, say, the federal court in Canada. This, of course, is also an advantage of the Ontario system compared with the federal level in Canada.

The general opinion of all the people I talked to in Australia was that the administrative appeal tribunals have been very successful. I have, as reported in a paper that I did comparing Ontario with the federal level and New Zealand—I think this paper may have been handed out to your committee—pretty well shifted my view, because I had always been in favour of the Ombudsman, to realizing that a commissioner who can make a binding decision or an administrative appeal tribunal that can do so, is probably a superior form of interpreting the act.

With respect to internal review, this is really an outstanding difference between the two systems and I think it is certainly worth further study. The interesting question is: Is it an unnecessary formal stage? You would expect to be able to appeal to a higher level within an agency or a department in any case, and this is what they told me in New Zealand. They said, "We don't think it's necessary and it simply complicates the appeal process."

An interesting question is whether the mediation stage the Ontario commissioner has developed is an adequate substitute. It is interesting that the administrative appeal tribunals have also developed this mediation stage, so they try to settle a refusal or other complaint by mediation before holding a formal hearing. They have developed a kind of two-stage system the same way the Ontario commissioner



has. I think it is worth further study because it is so different from our system.

With respect to local government, I do not think these countries have much to teach us, except New Zealand, because certainly Quebec and Ontario have been ahead of these countries in extending freedom of information to local government. It is not a big problem in New Zealand, so it looks as if there is not a great deal to be learned there.

With respect to privacy, of course, that is going to be the next big problem we will have to wrestle with—the extension of the protection of personal privacy to the private sector. Nearly all the people I talked to in Australia and New Zealand agreed that voluntary guidelines may not or, some said, will not work and we have to extend the freedom of information law to the private sector with respect to data protection, as they have done in Europe.

The interesting question, I guess, for this committee and the Ontario Legislature is whether the Freedom of Information and Protection of Privacy Act can be extended to include the private sector with respect to personal privacy, or is a new piece of legislation needed as has been done in Australia and the seven European countries I have spoken about.

I will conclude with some of the main comparative statistics. To give you an idea of the proportions, the total number of requests for information—these are figures for 1988—at the federal level, as I mentioned, has dropped from about 36,000 to 25,000. Victoria has about 11,000, which is a little more than double Ontario. Victoria is a slightly bigger population, I think, and probably the reason it is so big is because the act has been in effect for six years there. New South Wales, on the other hand, has only about 2,000 a year, and I suspect the reasons are that it is new, people do not know much about it yet, and the high cost of the fees which discourage people. This compares with Ontario, which has something like 5,000 requests a year. They are roughly comparable in terms of population except that the federal level in Australia appears to be exaggerated.

One has to keep in mind that these statistics combine requests for general information and requests for personal information, and the experience in these countries at the state level is that about 60% of the requests are for personal information. That would be about the same for Ontario, I would guess, is it not, that over half the requests are for personal information? Whereas at the federal level in Canada about 10 times this many requests are for personal information. It is roughly comparable in that respect.

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I have some comparative tables. New South Wales, because its scheme was new, was interested in comparing with its sister state of Victoria and with the federal level, so it produced an interesting comparative table of the key statistics. I will leave a copy of that with the clerk of your committee, along with a couple of other tables they produced. In my files I discovered duplicates of documents on Australia, and I will leave those with the clerk. Also, I did a scaled-down article for an Indian journal—India has become interested in freedom of information—that compares Ontario with the federal level, and there were some comparisons with

Australia and New Zealand. I will leave that article with the clerk and he may be able to reproduce it for your committee. I will also leave him with the references to my own publications in case you may be interested.

I hope you are not too confused by all these statistics and by the comparison of so many systems. I hope you will not be like the student—I was invited to be co-director of a conference of the Canadian Federation of Students one year, and we decided to have an evaluation at the end of the conference. We were questioning students about what they thought of it, and one young woman said: “When I came here I was confused. I’m still confused, but I am confused at a much higher level.”

I hope that you will be confused at a much higher level. Thank you very much, and I hope there will still be time for questions.

**The Chair:** Thank you, professor. There is about 10 minutes for questions.

**Mr Sterling:** With regard to the Australian legislation, is it more liberal in its provisions? Are the exemptions narrower so that more information gets out?

**Mr Rowat:** It is surprising how the countries have copied each other with these exemptions, but I think the outstanding feature of the Australian and New Zealand ones is that they provide for public interest. In most of their exemptions, instead of exempting by class of document, they will say, “It can be released for an overriding public interest.” That has been a liberalizing influence, I think, on the exemptions.

**Mr Sterling:** How often has that happened in Austria, in either the case—

**Mr Rowat:** The administrative appeals tribunal, especially at the federal level and in Victoria, has been rather generous in its interpretation of the public interest clause and so they had made use of that to issue orders to release information.

**Mr Sterling:** There has not been a public interest release of information in Ontario, has there? Not that I am aware of.

**Mr Rowat:** Maybe not. I do not know.

**Mr Sterling:** I do not think anybody who has appealed on that basis has won an appeal to date.

I see some negatives. I think the public interest test in Ontario is very, very narrow, and I think the former commissioner interpreted that to mean he did not have much room to deal with the public interest test.

**Mr Rowat:** Yes, that is one impression I had.

**Mr Sterling:** I wonder whether or not the reason we are not at 10,000 requests in Ontario is because people are not getting any real information. That is my reading of the act. I think it is a shield. I do not think it is a freedom of information act.

I was the minister who was responsible for this from 1981 to 1985, and the greatest fear of my cabinet colleagues was that there would be a great flood of information that went out. I now find that their fears were totally without foundation. I think the Ontario act, administratively, works wonderfully.



**Mr Rowat:** Yes.

**Mr Sterling:** I think that Sid Linden, as our first Information and Privacy Commissioner, did an absolutely wonderful job in setting it up. He has written good, reasoned decisions in a short period of time. Therefore, the law is perfectly clear now that you cannot get anything, so consequently people are going to stop.

I used the act maybe 40 times in the first three years. I gave up because basically you do not get anything that is not in a printed public document. The bottom line of the whole act, in my view, is that the freedom of information part of it is really a farce.

**Mr Rowat:** One of the impressions I have—it is an argument against having a single commissioner with the power to make binding decisions, I suppose—is that he has a tendency, I would say, to play it safe by being a little conservative in his interpretations because he knows that this is going to be the law. Whereas in some of the jurisdictions in Australia and New Zealand there is provision for a ministerial veto, there is no such thing here. So Linden knew that his decisions were going to become the law of the land, so to speak, whereas an Ombudsman just makes a recommendation that can be overturned and he or she can afford to be a little more liberal in their interpretations, I think.

But then the counterargument is the one I have already given. You get much quicker interpretations of the law because you get far more binding decisions, whereas the Federal Court I think heard about 12 cases in the first few years under the federal law.

**Mr Sterling:** Where is the ministerial veto, in New Zealand as well as Australia, or just in New Zealand?

**Mr Rowat:** I have forgotten. I cannot name them, but there is provision for a ministerial veto in New South Wales, I know, and that is relatively recent law. I remember that while I was there the Prime Minister exercised his veto, although he had made a promise that he would not do so, and there was quite a furore about that. There is that out, as far as the government is concerned I suppose, in the jurisdictions in Australia.

**Mr Daigeler:** Just as an aside, I would like to indicate to you, Professor Rowat, that I am familiar with your work on the Ombudsman because I have a personal friend from Switzerland who did graduate work with you in the mid-1970s by the name of Werner Schmid.

**Mr Rowat:** Werner Schmid. Of course, I remember. I visited him in Switzerland.

**Mr Daigeler:** Zurich. He has got a good place there, by the way.

**Mr Rowat:** He turned out to be a banker, did he not?

**Mr Daigeler:** Yes. That is right. If you are in Zurich and in Switzerland you should be a banker.

**Mr Rowat:** That just shows you what can happen to political scientists, I guess.

**Mr Daigeler:** We were both at Carleton at the same time.

My question arises from a document that I just picked up here. I am not a regular member of the committee but I read with interest the comments by a historian who is complaining

that the Archives of Ontario, because of the Freedom of Information and Protection of Privacy Act, is not making information available that otherwise would have been available. Apparently there is a 75-year time line now being put on documents to be looked into. Have you come across that at all in Australia? What are they doing to allow researchers—

**Mr Rowat:** No. I do not know about Australia, but I can say something about the federal level. I think the custom is—and I do not know whether it is true; it is probably true in Ontario—that even though documents are transferred to the archives they remain under the control of the originating department until this period is up. That may be a problem. It is the department that decides rather than the archives.

**Mr Daigeler:** I am simply going by this document here. The researcher says it is the archives that has put in that rule, apparently, in the act. Mr Sterling probably knows more about it. An agreement could be made with the archives to provide the documentation but apparently the present regulations are so strict that they cannot provide the names, and the names are all crossed out.

**Mr Rowat:** That is right. For personal privacy it did restrict the archives.

**Mr Daigeler:** The researcher says it is almost impossible to go after further information. She is saying she is doing some studies into the early 1930s. I am just wondering whether that matter also arose and whether they found a solution that you are aware of.

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**Mr Rowat:** I did not inquire into that, because that would be primarily a privacy aspect. I was not asking too many questions about privacy, only their integration with the general law. May I ask a question of Mr Sterling that arose out of his comments?

**The Chair:** Maybe we will just do the party rotation here and then I can come back. Mr Cooper.

**Mr Cooper:** Professor Rowat, I would like to thank you for appearing here today and giving us an overview of some of the other jurisdictions and their freedom of information. One thing you brought up, it seems you are advocating the Australian system where they have the internal review. Is it Australia?

**Mr Rowat:** No. I am sold on the administrative appeals tribunal but I am not so sure about the internal review, because it is a formal procedure and they charge money for it at the federal level and in New South Wales.

**Mr Cooper:** Oh, it is not like you are advocating it.

**Mr Rowat:** You see, Victoria has quite a different system. It has very low fees and it is very generous in its interpretation. I talked to the head of the FOI unit in the Attorney General's department and she said: "I think it's appalling that they're charging a fee for internal review. It should be a citizen's right to have his decision reviewed at a higher level within a department or agency." I think I agree with that. I am not sold on that. But it does seem to reduce the number of appeals that go through the formal procedure, which is costly, you see. That is one advantage of it I suppose.



**Mr Cooper:** You were saying about 5% to 20% of the cases are appealed and 50% are overturned. One of the things we have been discussing is that if the regulations were better enforced or better understood, right at the release of information, it would cut down on the number of appeals. Do you think that is possible?

**Mr Rowat:** Yes. One thing they told me they suspect happens under the internal appeal system is that if junior freedom of information officers, what we would call co-ordinators in this country, are doubtful, they will say no, because they know it can be appealed to a higher level within their own department. So this woman in Victoria was saying, "Why doesn't that officer consult a higher level to begin with and give a proper decision to begin with?" There is no reason why they could not do that.

**Mr Cooper:** So if a proper understanding of the regulations at the bottom was in place, the act would probably be better.

**Mr Rowat:** Or refer it to a higher level informally before the decision is made.

**The Chair:** Do you wish to ask Mr Sterling a question?

**Mr Rowat:** You were mentioning that you had made use of the freedom of information law. I noticed that there is a very good article by a man named Hazell—I do not know whether you ran into his name or not—who was from Britain. I think he was in the Prime Minister's office or some central agency.

He was sent to Australia, New Zealand and Canada to make a comparative study. He produced an article—and I can leave the reference to it with your clerk—which was an excellent comparison. It appeared about a year and a half to two years ago. He mentioned that the opposition in Ontario made very good use of the freedom of information act. I am just curious to know how many members of Parliament make use of the act and do they make use of it on the government side as well.

**Mr Sterling:** I do not think we make very much use of it any more, because we are better off asking for a request for information outside the act than inside the act, the reason being that the immediate reaction of a minister is to immediately stall for 30 days and then ask for an extension for another stall.

**Mr Rowat:** So an informal approach gets better results. That is your point.

**Mr Sterling:** That is right. I have not tried it under this government, quite frankly, but I found under the former Liberal government, basically it was used as a shield to get out timely information. By the time information is 60 days old it is no good to me. In a political atmosphere you have to have information usually within two or three days.

**Mr Rowat:** There is the same problem with newspaper reporters, of course, and I have always been surprised—

**Mr Sterling:** Even if I can identify the specific document and I know it is sitting on the minister's desk, I will not get it for at least 60 days. Consequently the opposition parties have basically given up. We may use it as a political ploy, but that would be the only use of the freedom of information act for opposition members now.

**Mr Rowat:** Are there not occasions on which it would be useful? I am always surprised at how much use the newspapers make of it, even though they may get this stalling tactic and it may take them days to get the results. I guess a good investigative reporter is not worried about getting the news out the next day.

**Mr Sterling:** No. The other thing I started to run into under our act with the former Liberal government was that it started to send me bills for thousands of dollars for information that I would get as an MPP, even though my job in being elected as a member of the Ontario Legislature was to object and find out information about what was going on.

**The Chair:** Thank you very much, gentlemen, for an interesting exchange. I wish to draw members' attention to a brief that is in their packages today from the chief archivist of Ontario. It deals with the subject that you brought up today.

The first paragraph, the bottom half of it, states, "Considering the experience to date of the Archives of Ontario in administering the legislation, and the difficulties encountered by its public users in gaining access to archival records, we believe that some amendments to this act are essential to make it workable in an historical research setting." So they also obviously have some concerns and maybe it would be worth the committee's while reading this brief and taking it into consideration when it is time to make some deliberations on the report.

Again, professor, thank you for coming along here this afternoon and making your presentation. I will make sure that the information you are leaving with the committee is distributed to committee members for their consideration.

**Mr Rowat:** Here is the documentation I was going to leave with you. Should I leave it with you?

**The Chair:** Leave it with the clerk of the committee.

#### CITY OF TORONTO

**The Chair:** The next group of witnesses are from the city of Toronto.

**Mr Levine:** I am not sure I am a group.

**The Chair:** I understand. State your name and position with the city.

**Mr Levine:** My name is Greg Levine. I am the research solicitor of the legal department of the city of Toronto.

**The Chair:** You have up to a half-hour to make your presentation. It would be nice if you could leave some time for members to ask questions, if it is possible. I understand Barbara Caplan from the city clerk's department is here today as well.

**Mr Levine:** She is. I would like to thank the Chair and members of the committee for the opportunity to appear before the committee to present a submission to the Legislature that was adopted by city council in two stages on May 27, 1991, and October 7, 1991.

In the submission contained in clause 85 of executive committee report number 24, you will find the main submission which incorporates a previous report, that is clause 58 of executive committee report number 12, which is at



the end of that submission. There are two pieces of paper. The first one is the main submission and the second is an addendum.

The city of Toronto has now operated under the Municipal Freedom of Information and Protection of Privacy Act, 1989, for nine months. That experience has raised general questions about the operation of that act and the functions of the Information and Privacy Commissioner which are equally applicable to the provincial Freedom of Information and Protection of Privacy Act, 1987. Hence, comment at this time seems appropriate.

Moreover, because the province has demonstrated a desire to keep both acts coincident and in fact has made them virtually identical, it is likely that changes in one will have an impact on the other. That possibility also encourages comment at this time by the city.

This submission makes 17 recommendations concerning the powers and duties of the Information and Privacy Commissioner, definitions in the act, the precise meaning and effect of certain sections, and the collection of fees. Really, these are just a beginning in terms of the need for correction to these acts. We do not see them as clear as has been expressed in comments that I have heard today at this committee.

The first set of things I would like to talk about are the powers and duties of the Information and Privacy Commissioner. Section 59 of the provincial act, or section 46 of the municipal equivalent, conveys various powers on the Information and Privacy Commissioner. Especially important are clauses 59(a), (b) and (c) which deal with protection of privacy generally. I will deal with each of those in turn.

1700

Section 59 of the provincial act, or section 46 as the municipal equivalent, conveys various powers on the Information and Privacy Commissioner. Especially important are clauses 59(a), (b) and (c), which deal with protection of privacy generally. I will deal with each of those in turn.

The first deals with the power of the commissioner to comment on privacy protection. Clause 59(a) allows the Information and Privacy Commissioner to comment on privacy protection with respect to proposed government programs. The act does not contain a mechanism for an institution to seek comment. It also does not require the commissioner to comment.

If there is truly a desire to enhance privacy protection in proposed legislative schemes and government programs, surely institutions should have a right of comment and the commissioner should be obligated to reply. This would provide for rational planning and would avoid needless confrontation with respect to privacy issues.

Essentially, the comment of the Information and Privacy Commissioner would be analogous to a tax ruling or advice given in respect of conflict of interest. There are clearly precedents for such a process. For example, section 14 of the Members' Conflict of Interest Act, 1988 allows members to seek comment on conflict-of-interest questions.

It is therefore recommended that:

Clause 59(a) of the provincial act and clause 46(a) of the municipal version be amended such that institutions

may seek comment on the privacy protection implications of proposed legislation and programs, and that the Information and Privacy Commissioner be obligated to respond to institutional requests for comment.

The second major issue deals with cessation of collection orders and the alleged investigation powers of the Information and Privacy Commissioner.

Clause 59(b), and 46(b) in the municipal equivalent, has been used in conjunction with clause 4(a) of the provincial act to justify investigations by the Information and Privacy Commissioner.

The Information and Privacy Commissioner takes the view that he has the authority to conduct privacy investigations. He argues that this power is implied given the mandate of the agency, and the case law supports the implied power because it is a practical necessity to have such power to fulfil the mandate, although I note that he or a representative has appeared before this committee and asked for explicit power to investigate.

The city of Toronto does not accept this view. It is respectfully submitted that the function of the privacy commission is as an administrative tribunal which resolves disputes related to access to information and governmental collection of information. Its primary function is to act as a dispute resolution board in which disputing parties are heard. The method of hearing may be different than other administrative tribunals, but it has an analogous function.

Secondarily, the commissioner may offer advice on privacy protection, public education programs and the like. An investigation function seems both unnecessary and incongruent with the hearing function of the commissioner; however, if it is decided that an investigation function is deemed necessary, that it be given to another body which stands in an arm's-length relationship to the Information and Privacy Commissioner. There are analogues for this in the US, particularly over conflict-of-interest matters.

Having said that, the thrust of the act really indicates that the commissioner has hearing functions respecting appeals regarding access and complaints about privacy. Clause 59(b) is surely directed towards a complaints process related to collection of personal information. The complaint process should be clearly stated as is the access procedure. As well, the form of hearing should be specified.

It is recommended, therefore, that clause 59(b) of the provincial act and 46(b) of the municipal equivalent be amended to include a complaints process respecting collection of personal information, which includes defined time limits for initiating complaints, and that those subsections be amended to specify the hearing process after which the commissioner may make orders. As it is now, it is too general and it is not clear what it means.

Finally, in terms of the commissioner's power, we would like to comment on the power to authorize indirect collection of personal information.

Clause 59(c) of the provincial act and 46(c) of the municipal equivalent allow the commissioner to authorize indirect collection of personal information. The subsection does not provide a method for institutions to ask for authorization, although it implies that such requests will be made. It also does not require the Information and Privacy



Commissioner to respond. Those subsections therefore should be amended to indicate clearly that institutions may apply in writing for such authorization, and the commissioner must respond in writing to such requests.

The second general area I would like to talk about is various definitions. Many terms in this act remain ambiguous or undefined. I would just like to talk about five terms, although when you pick up the act almost any word can be controversial. I would like to talk about five generally: "access," "collection," "legal authority," "public record" and "routine inspection."

"Access" is used throughout the act but it is not a defined term. Intuitively it is a right to see—or "approach," if you will—records. It is really about availability and should be defined as such. There is a problem in the act when you read the right to have a copy and the right of pre-existing access, which is embedded in these acts—section 30 of the provincial act or section 23 of the municipal equivalent conveys a right of copying subject to certain restrictions to anyone who obtains access. But the right is not synonymous with access, although interpretations that I have heard have in fact treated them as such.

This is really important in light of what is called the pre-existing right of access, which is in subsection 63(2) of the provincial act and subsection 50(2) of the municipal act. This right allows access to records which do not include personal information which were available to the public by "statute, custom or practice." In the past in many municipal institutions, many records have been made available for inspection without a right of copy. If access is now seen to include copying, it will preclude the operation of the pre-existing right of access. Therefore we would suggest defining "access" as "the right to see records," but which "does not include the right to copy records."

The second major term that I think should be defined is "collection." Collection of personal information is a major issue in both these acts, but it is not defined. To collect means "to assemble, accumulate or bring together." It is an active state. To be sure, institutions initiate the gathering of much personal information. However, institutions often receive information that they have not sought out. Beyond this, collection by an institution should not be confused with collections by individuals who are employed by the institution. The institution should not be held accountable for collection of information which it has not authorized. "Collection," therefore, should be defined as follows: "assembling, accumulation or bringing together" of information, "but does not include such action by employees of an institution where such action has not been authorized by the institution."

The term "legal authority" also has not been defined. You have to state what the legal authority is for collection of personal information when you provide notice of it. What is it? We suggest making it clear that it is not only statutory authority but is "authority given by statute, bylaw, regulation or the common law."

The fourth definition is "public record." This is not actually a term used in the act, but we suggest it be added to the act. Section 37 of the provincial act and section 27 of the municipal equivalent indicate that the provisions

respecting protection of privacy do not apply if the information "is maintained for the purpose of creating a record that is available to the general public." So an exemption for what might be termed "public record" does not specify how one is to determine if something is a public record. We suggest that that "public record" should be defined as "a record designated as public pursuant to statute, bylaw, resolution or regulation."

Finally, in the definitions we would like to discuss at this time is the definition of "routine inspection." The law enforcement exemption in both acts indicates that institutions must disclose reports "prepared in the course of routine inspections," but nowhere is a routine inspection defined. It is not exactly obvious what a routine inspection is. Is it routine if it is a regular inspection carried out at a specified time or time period? Is it routine if it is the usual requirement of an application process? Is it routine if it is the required response to complaints? We recommend defining "routine inspection" as "an inspection carried out at regular time intervals," but which "does not include inspections carried out pursuant to applications or complaints."

#### 1710

The next general sections I would like to deal with are sections that require clarification or change. One of these is the personal privacy exemption. There are two elements here we would like to talk about. One is the research element, which there was some discussion of by the previous speaker. The other is the meaning of public scrutiny.

Section 21 of the provincial act, or 14 of the municipal equivalent, deals with personal privacy. The intent of the section is to ensure that the information pertaining to identifiable individuals is not disclosed to anyone other than those individuals, except in certain circumstances. Clause 21(1)(e), or 14(1)(e), presents a very curious exception. It states, and I will read the first part of it:

"(1) A head shall refuse to disclose personal information to any person other than the individual to whom the information relates except,

"(e) for a research purpose, if,

"(i) the disclosure is consistent with the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained."

We submit that, with the exception of some contemporary data banks, the conditions in subclause 21(1)(e)(i) are impossible to meet. With personal information held in archives, it is seldom clear what were the conditions or reasonable expectations of disclosure under which the personal information was provided, collected or obtained. It is possible to ascertain in some cases. It is impossible in most. The logic of this section is such that it will allow disclosure if the information was acquired in a confidential fashion. The rest of the section is to allow researchers to have access, so long as they do not disclose the individual identifiers.

The logical outcome of this section is for the institution to treat all the information that it does not definitely know to have been for public consumption as confidential and to have researchers enter into research agreements. The effect on certain types of history may well be devastating. Political biography is a good example. This may in turn lead to a limiting of the ability of people to scrutinize government action.



Some have argued that this section really does not matter much, as it can be read to allow access to government materials because people would expect that such materials would end up in a publicly accessible archives. This position is surely untenable and does not reflect the wording of the act. If you took that position, you would not bother with research agreements; you would just release the information.

It is therefore recommended that this clause be clarified and that the clarification take place in consultation with professional history and social science associations.

The other part of this section we wanted to discuss was public scrutiny. Public scrutiny of government is one justification for allowing disclosure of personal information in clause 21(2)(a). The level or kind of public scrutiny is not elaborated. Which activities and which personal information should be opened in this regard should be codified. That is what we recommend. We recommend that institutions and the public be asked to make submissions with respect to that codification.

The other general area in terms of personal privacy is the public interest test. Section 23 of the provincial act forces disclosure where a compelling public interest in the disclosure of the record clearly outweighs the purpose of the exemption. I realize there have been orders on this, but this really should be clarified. The problem is similar to that respecting public scrutiny. What will be seen as compelling? What will decide what is the public interest? There should be a definition achieved through a public consultation.

The last area I would like to talk about is fees. It is last but not least. Section 57 of the provincial act allows an institution to collect minimal fees. Section 45 of the municipal act requires collection of such fees. Neither allows collection of fees for analysis of requests which, of course, is the major cost. Both allow for specification of fee structure by regulation. This means a lack of flexibility in the setting of fees between institutions. The institutions should be allowed some discretion and so our last recommendation is that those sections be amended to allow institutions flexibility in setting of fees for processing applications.

That is it. Thank you.

**The Chair:** Thank you. Any questions from members?

**Mr Cooper:** I would like to make a comment. I would like to thank you for this presentation. It is one of the more concise and specific presentations we have had.

**The Chair:** Thank you for coming this afternoon and making your presentation. You have given us something to go on here when it is our time to look at making recommendations to the Legislature. As you know, we have to table the report with recommendations on or before, I think, December 12, so we will make sure that both yourself and anyone who made a presentation here during these hearings will get a copy of that report.

#### PARENTS EMPOWERING PARENTS

**The Chair:** The next witness is from the Parents Empowering Parents. The chairman is Brenda Ryan. You have up to a half hour to make your presentation.

**Mrs Ryan:** My name is Brenda Ryan and I am the chairman of Parents Empowering Parents. We had the

opportunity to speak to the committee in the early part of this year—February, I believe—so today I will be very brief.

When we made our original presentation we were unfamiliar with the protocol. Primarily what we did was present many questions without attempting to give any ideas around solutions. Today I will be very brief, and I think we may have some wonderful simplistic food for thought.

But before I give you that information I would like to go back one step, about three weeks ago, and give you an idea of the type of situation that we are dealing with, for those members who were not here when I spoke last.

I had a telephone call from a mother in Barrie, Ontario who had a child who was very ill, who physically had had numerous medical-surgical problems and had developed a mental health problem, probably as a result of trauma from surgery. This young lady needed treatment. The mother was attacked by the child, and the child was placed in a hospital, appropriately so. The hospital contacted the mother and had apparently decided that the appropriate step to take was to have the child placed in a foster home. This is a child who has had nine brain aneurysms, a stroke, 56 operations—I have no idea what the prognosis of this child is—and the child welfare agency had decided the appropriate step for this 13-year-old child was to take her away from her mother and place her in a foster home.

There were two members of Queen's Park whom I contacted to assist the mother and, quite frankly, I am absolutely thrilled that those members responded immediately and contacted the agencies involved and, I believe, the hospital or physician. Within 24 hours, the child welfare agency had suddenly changed its mind. We do not know why it happened, but it did.

The interesting point is, if the mother had not become politically active, that child would be abandoned in a foster home, possibly with a family—as well meaning as it is—which would have absolutely no information or idea on how to deal with a child with a brain shunt, who had psychiatric problems and who had had a stroke.

What we as an organization would very much appreciate this government doing is twofold. First, we strongly recommend that a commission be established to travel throughout the province to evaluate child-serving agencies, whether it is a child counselling agency for mental health, a child welfare agency, an educational agency or facility, or a health care centre.

1720

The only legislation we are aware of regarding the freedom of information of children and the protection of privacy falls under the Child and Family Services Act, section 8, which I believe has never been enforced. It has never been acknowledged. As a layperson I can look at the legislation and see it written there, but it does not mean anything because it has not been accepted.

Our concern is that, generally speaking, the child welfare agencies and—I have to be very careful; I use these words very carefully—the service providers to people under the age of 16 in any area seem to be in an absolute and complete area of immunity to any sort of evaluation or justification. There is no committee to evaluate their service or



their documentation style. There is no provincial watchdog or agency to address it.

Our organization would like to see a committee that would consist of two legal experts who have dealt with child-related issues. We would like to see this committee also have a minimum of one psychiatrist and one psychologist. We would like this committee to have two members of the social work field, hopefully with a master's degree or a PhD level in family systems—not family blaming, not family assessing, but family systems: how does a family work, how does a family grieve and how does a family deal with a child with a difficult problem? Lastly, we would like to see this committee consist of at least two members of the community at large who have had exposure through a volunteer basis or a community basis dealing with and supporting or helping families.

I think if we were to have such a committee, and at the same time protected the privacy of children by deleting or whiting out their names, this committee could look around the province and evaluate what is happening to our children. We have a horrendous situation.

The five Ws have to be answered. Who is calling in these child welfare agencies? When are they calling them in? Why are they calling them in? What is being done? There is another W; I have forgotten which one it is. It will stimulate your thought for a while.

The point is, we have to go in with an open mind, not to attack anyone, to first of all acknowledge the areas where there has been superb treatment for some of these children. There have been some areas where families have had wonderful success in helping their children. We may not be able to document or come forward and give presentations in the usual format because, unlike any other agencies, we are not allowed to read or review the documents that are written on our children.

Children between the ages of 12 and 15 are in a unique area as well. The agencies are allowed to make absolute overriding decisions on their counselling or services and are not obligated to share this information with any other person. The concern we have as an organization is that we are not sure what is being documented, what is being understood and what is being misunderstood about our children. The only way we will be able to find that out is by having the services for children reviewed. They have to open up the files, not necessarily to the families, but they have to open up the files to someone to justify that the protection of privacy and freedom of information and dignity is given to children in Ontario.

I really do not have a lot more to say today. Since we presented our first statement back in February we have heard over and over and over again, almost on a weekly basis, of families in terrible situations dealing with this crisis. I do not want to repeat the same sort of sad, soppy stories that I told seven months ago, but I absolutely plead with you to please do something to evaluate what is happening, what is endangering the lives of our kids. Thank you.

**The Chair:** Thank you very much indeed. It was another powerful presentation today, the same as in February. We will open up the floor to questions.

**Mr Owens:** I do have some familiarity with the story you related to the committee earlier. I think it is instructive for the committee to hear again part of the story you came to us with at your first appearance. I do not think it is a sad or a soppy story. I think there are some very good points that need to be made with respect to your two children, one of whom is now deceased, and the issue of when you finally were able to get your hands on some form of records, what exactly it was that you found contained within those records.

**Mrs Ryan:** I would be delighted. My eldest daughter became involved with child welfare agencies on June 24, 1979, when my child was literally ripped away from home. I actually was unable to have any information regarding any documentation or even a sense of what the child welfare agencies thought, felt, perceived, knew until September 1989, at which time I had approached the children's aid society on numerous occasions and asked them to review the file to find out what had been written and documented about my oldest child.

In September 1989, I read a few things in the document. Number one, there has been and there is a confession of sexual abuse which has never gone to court because my child was never well enough to testify. I also found out that this agency had known that this person had confessed and had not done anything, had not had the courtesy to take this issue to court to seek justice for a young lady.

I also discovered that my poor child was so disturbed that during the time she was involved with the child welfare agency, she had gone through not one, not two, but three abortions. This child was 15 years old. What kind of child has to have three abortions at 15? My daughter was very, very, very ill.

My youngest child was also very ill. I could not get service for her. I could not understand why I was not even being heard. Our family physician and a youth counselling service in our community were involved and very supportive. They attempted to have this child placed temporarily for protection herself in a child welfare facility until we could get her in psychiatric treatment, which she desperately needed. Not only did I not get that, but I was challenged and threatened that if I tried to do anything but obey them, I would be taken to court and found an unfit mother, at which time I suggested very strongly that they not hesitate for one moment, but that we would do it immediately.

I almost lost my second child. My second child was very ill for quite a number of years and eventually had to go out of province to get very intensive long-term treatment. I would like to finish my comment, Mr Owens, by saying that my daughter is back home. She is extremely healthy. She is an 87% average, I found out, as of today, and this is a child that prior going into treatment could not even learn. It is not an unusual story. These things are happening every day.

1730

**Mr Daigeler:** I take it that your main concern is to carry out a review of the operation of the child care agencies in this province. Is that your main concern?



**Mrs Ryan:** That would be my secondary goal. My first goal is to amend the legislation so that the books can be opened when necessary. I do not think we need any more reviews. I think that virtually every member, if I was to have an opportunity to interview them, would have had a horror story in their own constituency.

**Mr Daigeler:** So you feel that you do not have proper access to the information that you would like to have access to.

**Mrs Ryan:** There is not a doubt in my mind that children in Ontario may not necessarily have the protection that we as an adult population feel they have, that what is happening to them when they are involved with a child care agency may not actually be in the best interest of that child, because every person—

**Mr Daigeler:** If I can go back to my question, you are saying you do not have access to information you think you should have access to. Is that the point?

**Mrs Ryan:** I know that not only I but no other family has access to the information.

**Mr Daigeler:** And you think you should.

**Mrs Ryan:** I know we should. I am sorry, but I am a fanatic about this. I have thought about it for 11 years. I now know and I now feel that my obligation to the children of Ontario is to be here before you today.

**Mr Frankford:** It is obviously a complex story. I was a family physician before I got into this, and I was wondering whether you have thought about or would advocate some sort of client-held record, a comprehensive file that would go with the individual, if it is a child, and be transferred around and also be open to the family.

**Mrs Ryan:** Oh, absolutely. I think it is a horrendous situation that the family physicians are involved with. Our organization of parents and children has heard almost unanimously from general practitioners of their frustration, the fact that as caring professionals involved with the whole family they will call a child welfare agency to seek assistance or support or answers and they are not always able to get them. I do not know of any general practitioner who is able to have a child welfare agency open a file so that the physician could deal with the child. Correct me if I am wrong. Do you know about that?

**Mr Frankford:** I certainly do not think one has any right of access, in my experience. If there is, it is well hidden.

**Mrs Ryan:** This has been the information we have had from virtually every source. We have gone to every possible symposium and conference and organization we can go to. We have opened our minds, we have opened our hearts, we have opened our souls to these people, to everyone, on behalf of the children, and there is this invisible barrier that seems to be there. The frustration is that we know the family physicians are just as upset as the families when they care about a family and their hands are tied.

**Mr Frankford:** Have you had any dealings with the College of Physicians and Surgeons of Ontario and asked them their opinion on what should be on records or on patient files?

**Mrs Ryan:** We, as an organization, have not contacted the College of Physicians and Surgeons to ask them, but I do believe the college has prepared submissions. As a matter of fact, the Ontario College of Family Physicians wrote an article regarding the death of my child and they used that as an example of the frustrations the general practitioners are dealing with. I was given a copy of that. I believe the Ontario Association of Professional Social Workers did the same thing. I am really pleased that my daughter was able to help the people who do care and I was glad that I was able to see those copies, to know that there are professionals and service providers who feel as frustrated as we do as family members.

**Mr Owens:** Just so the committee is clear on the point you are trying to make, supposing the situation you had described earlier had played itself out as it would have without the intervention of two members. That means the child in need of psychiatric care, not foster care, would have been taken from the home and the parents would have had no further access to the child, no further access to the records, no continuing participation in the child's care?

**Mrs Ryan:** That is absolutely correct. Furthermore, there is nothing we are aware of documented in any way that a child welfare agency would even have to justify to any agency or any organization why it made the decision it made. I heard something interesting and I have wondered about it. Apparently the method of funding and forecasting for several agencies changes from year to year. I was told that back in 1979 when my child was ripped away from my arms, and she was, the only way the child welfare agencies during that time period could get decent funding was by actually taking a child into care. That if they were providing service to a child living with the family there were limited resources, but if they actually took the child they then could get the money that they wanted.

I am not going to suggest that they did not make a decision except on what even they may have thought was in the child's best interest. I do not want to say that. But I find it odd to suggest that if you apply program A you get nothing and if you apply program B you get the money.

**Mr Owens:** One of the questions I put to you the last time you were here, when I probably struggled through it as I am going to struggle through it now, is that out of your testimony I talked to you about establishing some kind of a panel outside the CAS to perhaps vet requests for information on children in their care. You have now talked about a task force to establish the standards of record-keeping. I understand that to be the gist of your recommendation. What, then, would be the final outcome of this commission? Why would we do this? With a view to doing what?

**Mrs Ryan:** Human nature being what it is, I honestly feel that if there was a task force established that would be able to review the history of events throughout the province over, say, the last 10 years even—let's say 11 years and make it a nice round number—then I think what will happen is that service providers will sharpen the pencil and be much more careful what is documented and how it is documented presently.



In addition, I think the province will be exposed to an absolute mess of injustices that have occurred to children over the last several years. That does not necessarily mean we have to expose it to lay blame, because I do not think blame belongs in a system for improvement. It just does not work. But I think if we look at it and we see where the mistakes were, then we will know. I think the committee of experts is a short-term solution to review a critical situation.

The last and the most important element is that there has to be input from the youth themselves at this task force.

**Mr Owens:** Absolutely.

**Mrs Ryan:** You know, I have heard it said off the record many, many, many times by service providers that, "We do things with kids on a one on one because, heaven forbid, they are all going to get bad ideas from one another." That may be true, but, you know, there are a lot of kids in Ontario, young adolescents, who are not troubled kids, who are very strong-willed kids, who are positive thinkers.

The young people of today will be the politicians of tomorrow, heaven forbid, and the doctors of tomorrow and the social workers of tomorrow and the construction workers and the police officers of tomorrow. So if they are going to be that tomorrow, why do we not let them play at

being intelligent and appropriate and give them the respect and dignity and listen to them now? Maybe they have something worthwhile to say. Maybe they can help us, Steve. Maybe we do not have to make all of these decisions ourselves. I think a youth forum is really good.

**The Chair:** Thank you, Mrs Ryan, for coming along here again this afternoon and making another extremely powerful presentation to this committee. Believe me, your presentations both today and in February have not gone unnoticed to the committee members.

Mrs Ryan made some very useful suggestions. I suggest to the committee that we forward the transcript of the proceedings here this afternoon, especially Mrs Ryan's suggestions, to the appropriate ministers. Is that agreed? Agreed.

**Mrs Ryan:** Thank you very much for the opportunity, but more than just thanking on my behalf, on behalf of the children I thank you.

**The Chair:** Seeing no further business this afternoon, the committee stands adjourned until October 16 at 3:30.

The committee adjourned at 1742.

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ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Official Report of Debates (Hansard)

Wednesday 16 October 1991

### Standing committee on the Legislative Assembly

Review of Freedom of Information  
and Protection of Privacy Act, 1987

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mercredi 16 octobre 1991

### Comité permanent de l'Assemblée législative

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée



Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
Greffier : Douglas Arnott





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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 16 October 1991

The committee met at 1535 in room 151.

### RESIGNATION OF VICE-CHAIR

**The Chair:** The standing committee on the Legislative Assembly is gathered this afternoon to continue our review of the Freedom of Information and Protection of Privacy Act, 1987.

Before we begin that, I would like to read a letter I received from Ellen MacKinnon, the member for Lambton. It says:

"Dear Mr Arnott,

"I hereby submit my resignation as the Vice-Chair of the standing committee on the Legislative Assembly, effective October 16, 1991.

"Please convey my appreciation to members of the committee for their co-operation during my tenure as Vice-Chair. I would also like to thank you for your assistance, and trust that you will be equally helpful to my successor."

I move the committee receives this and I understand—

**Mr McClelland:** Go ahead. I just want to get on your list.

**Mrs Marland:** We both do.

**The Chair:** Okay. I understand this issue will be dealt with next week when things are worked out between the House leaders. Margaret, were you first?

**Mrs Marland:** I will bow to the loyal opposition.

**Mr McClelland:** No, she was first. Ladies are always first in my book.

**Mrs Marland:** Obviously, this resignation comes as a surprise to us. I just want to say on behalf of our caucus that we will accept Ellen's resignation with regret. I hope, however, your caucus is moving you, Ellen; that you are going on to bigger and better things. We regret your need to resign for whatever reason. We certainly hope the Premier will ask us which of the other members would be a good replacement.

**Mr McClelland:** I do not understand why Mr Owens is laughing so much. I second the sentiment. I simply want to say, Ellen, that one of the comments made from time to time in this place is that this committee, more than any other, seems to operate on a level of camaraderie and non-partisanship. You have been a contributing factor to that.

Since we are on the record I will be very selective in what I say, but I want to say that the first time we went on the road together dealing with this legislation that is before us—we went to Ottawa—was shortly after we were elected to this Parliament. You were a new member and it was my second time back, albeit in entirely different circumstances. I want to say that at that point in time, when I really first got to know you, you indicated something that was consistent with what has been said about this committee: that you are certainly committed to people and to your

riding. Whatever capacity you serve around this place—I do not know what committees we may be serving on in the future—thank you for the contribution you made to this committee. It is appreciated by us all.

**Mr Owens:** Just a quick comment. I want to echo the sentiments of my colleagues opposite, Ellen, that your contribution to this committee has been one of substance, one of warmth and one of humour. The same road trip to Ottawa—some well-needed laughs during some fairly dry meetings. I am sure at the appropriate time you will be able to share with us where you will be taking up your new post. On behalf of your colleagues on this side of the committee, we appreciate your hard work and of course we will continue to look forward to working with you.

**The Chair:** Thank you again, on behalf of all the committee. I think we appreciate the work you have done as Vice-Chair, which contributes to the fact that this committee operates on a fairly non-partisan basis, and hope that whoever your replacement is, he or she will continue to operate and work in that vein as well. On behalf of all the committee again, thank you for the last 12 or 14 months sitting as a member of this committee.

**Mrs MacKinnon:** Thank you, everybody.

### FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

**The Chair:** We will begin our deliberations on the Freedom of Information and Protection of Privacy Act, 1987.

### CANADIAN BAR ASSOCIATION—ONTARIO

**The Chair:** Our first group of witnesses is from the Canadian Bar Association—Ontario. Welcome to the committee. You have one half-hour to make a presentation, but I advise you to leave some time for members to be able to ask you some questions. If you would begin by stating everybody's name and the position they hold within the organization, please.

**Mr Alexander:** It gives me pleasure as the president of the Canadian Bar Association—Ontario to appear before your committee today and to introduce to you the members of the special committee of our organization on the review of the Freedom of Information and Protection of Privacy Act. They are Heather Mitchell; Penny Bonner, the chair of the committee; Colin McNairn; Christopher Woodbury, and Janice Rubin.

The CBAO, as you know, is an organization of lawyers in the province of Ontario, a voluntary organization which has some 16,000 members and from time to time brings its message, when we are able to be heard, to this House and to its committees in response to circumstances as we see



them. We hope the spirit in which we bring our message will always prevail on its receipt. We do so in a spirit of co-operation and as citizens of this province in an effort to do what we feel is in the best interests of its citizens. We trust we are never perceived as being the messenger who should be shot, but rather the purveyor of our sincerest and best-held views on matters that we feel are not only dear to us but of importance in the day-to-day lives of the public we all serve.

I would now like to introduce Penny Bonner, the chair of the committee, who will proceed with the message to you.

**Ms Bonner:** Again, I would like to express our appreciation for the opportunity to talk to you about our submission. What I propose to do is simply to introduce the members of this special committee that has been struck by the Canadian Bar Association—Ontario to deal with this issue and give some of their backgrounds that relate to their expertise in this area. I will highlight a couple of the recommendations we have made that we feel are most important and then simply take any questions the members of the committee may have for the members of our special committee.

Colin McNairn is a partner in the firm of Fraser and Beatty. He was formerly a professor of law at the University of Toronto and is the author of two books, one being *Governmental and Intergovernmental Immunity in Australia and Canada*, and is the co-author with Mr Woodbury of *Government Information Access and Privacy*, which was the first updated reporter series that was published in Canada that relates to freedom of information legislation in all the provinces and at the federal level.

Heather Mitchell is a Toronto lawyer who started working on freedom of information issues in 1975. She did a research report commissioned by the Consumer Research Council of Canada and since then she has written and lectured extensively with particular reference to the concerns of journalists and other requesters. Heather is the co-author of the book *Using the Access to Information Act*, the federal statute, which was the first to come in, published by Self-Counsel Press.

Christopher Woodbury is a partner with Fraser and Beatty as well and is the manager of the firm's research department. He is the author, with Mr McNairn, of *Government Information Access and Privacy*, which is an annually supplemented book dealing comprehensively with FOI and privacy issues in force across all jurisdictions.

Janice Rubin is an associate lawyer with the law firm of Blake, Cassels and Graydon, where she practises civil litigation and administrative law. She has special expertise in this area from working at the Information and Privacy Commissioner's office during her articling year taking her bar admission course.

I should try to tell you what the focus of the interests of the members of the committee has been in relation to this submission. Heather has certainly been focusing primarily on the concerns and interests of requesters, of users of the legislation. Colin has been focusing on the procedures and rights affecting third parties; they can be both individual or corporate. Christopher is our expert on the protection of privacy aspect of the legislation, and Janice has focused on the appeals process and procedures.

I should give you a little bit of my background. I am a partner with Osler, Hoskin and Harcourt and have been working on FOI issues ever since the federal act was introduced when I was practising in Ottawa. I have acted at the federal, provincial and municipal levels for users, requesters, institutions and third parties, and tend to speak a great deal at conferences trying to explain to co-ordinators what the interests and problems of third parties are. I was also a member of the CBAO committee that made representations to the legislative committee when this bill had just received second reading. Heather and I were both members of the CBA national committee on the parliamentary review of the federal statute in 1986.

We have tried to put together a fairly broad cross-section of the practitioners who deal with the act.

One thing that happened when we first met was that we realized there was no desperate need for any substantial amendments to the act. It was a sign I think that the act had been very well drafted initially and that it was working reasonably well as intended. Most of the concerns expressed about the act dealt with the implementation of it, either procedural problems or delays inherent in the process. We did not focus then on trying to find glaring deficiencies in the act, because they simply were not being expressed by the members of the legal community.

We decided to focus the structure of our submission on responses to the amendments you received from the Information and Privacy Commissioner, feeling in many cases there were amendments that office had proposed that we could support or that we had reason not to support. You can take it from our submission that where we have accepted a recommendation of the Information and Privacy Commissioner without any further comment on it, it means we adopted its rationale and reasoning for the amendment.

What I would like to do now is highlight a few of the recommendations that we feel are most significant in our submission. One is a recommendation that does not lend itself to an amendment by your committee. It is the one contained at paragraph 30 of the submission on pages 32 and 33. That is a plea for more detailed reasons being issued by the commissioner in his orders. We have found that the more detail that can be given in the orders, the more we can build up a body of jurisprudence, the greater the understanding of the act will be. All we can hope is that you find it within your means to perhaps mention in your report that this would be a positive step.

The other thing I mentioned earlier was that there are concerns about the delays that have been perceived with the implementation of the act both in the institution responding to requests and in the processing of appeals by the commissioner's office. I have to tell you that delay is an issue that has divided the legal community. When we are acting for requesters, we certainly oppose delay vigorously. When we are acting for third parties, it may be that delay is in the interests of the third party, but we do believe that it is not the spirit and intent of the legislation that delays should be encountered on a regular basis.

1550

What we have done in relation to that concern is propose two amendments. One adopts the commissioner's



recommendation that there be a disincentive imposed upon the institution for failing to adhere to the time limits. The commissioner has proposed that he be given the authority to order waiver of any fees charged by the institution where that institution has failed to comply with its time limits. We support that recommendation.

We have also proposed that within the commissioner's office there is a procedure for settlement or mediation prior to the appeal going for full inquiry before the commission. We have found that appeals tend to languish at that mediation settlement stage when it is clear from the parties' positions that there is absolutely no possibility of settlement. What we have proposed is, with the agreement of the parties, after 60 days, if no settlement is apparently achievable, then that matter should move immediately to full inquiry.

One substantive amendment we have proposed is: The act currently contains a provision that the head of the institution may refuse to confirm or deny the existence of a record if the exemption claimed for that record is law-enforcement or personal information. We feel there are situations where the injury that the exemption is intended to protect could occur simply by the head of the institution confirming or denying the existence of that record. This is a recommendation that is contained at paragraph 6 of our submission and it coincides with the wording of the federal act. We simply suggest that this discretion be given to the head for all exemptions in the act.

The other very important procedural amendment we have focused on is contained at paragraph 8 of the submission on pages 8 to 11, and that relates to the third-party procedure. This is the situation where a third party receives notice that a record has been requested that the head intends to disclose, and gives that third party the opportunity to make representations to the head within a 20-day period as to why the record should not be disclosed. We have encountered situations where the third party is in an impossible position either to decide to make representations or to structure the content of those representations because the third party does not have ready access to the record. We are proposing that a copy of the record be sent along with the third-party notice. Again, this is the practice under the federal statute and we certainly feel that it will end up enabling third parties to make better-reasoned representations and also to meet their 20-day time limit.

Those were really all the recommendations I wanted to highlight for your attention, and unless any of the members of my committee have anything to add, I would just open ourselves up to questions that any of your members may have for us, Mr Chair.

**Mr Owens:** Thank you for your presentation. On page 22 of your submission, point 19, you bring up the issue of computer matching, which you did not mention here today. I wish you would talk a little bit more about that because that is an issue that concerns us from the privacy side. Also, if you have any thoughts on extrapolating the computer-matching problem to protection of privacy in the private or commercial sector, where people are now being requested to divulge more and more personal details about themselves to commercial operations.

**Ms Bonner:** With your permission, I will pass that one along to Mr Woodbury, who is our expert in that area.

**Mr Woodbury:** The issue of computer matching is a serious one I think. As we indicated in our submission, we support the recommendation made by the Information and Privacy Commissioner that a special task force be set up to report, he has suggested within six months, on the whole issue of computer matching and the need for certain safeguards to prevent potential violations of personal privacy. As I am sure you are well aware, the advent and development of computer technology has not necessarily affected the amount of information governments have collected, but it certainly makes that information much more accessible. Previously the information was in cabinets and files and was essentially inaccessible. It was too difficult to make it available to make it a serious concern.

The problem as we see it is that the current legislation does not deal with computer matching at all. We support the suggestion of the commissioner that it is an issue that needs to be addressed. It deserves a full and complete review by a special group that is dedicated to reviewing that. It is not something that we feel can be addressed simply by amending this piece of legislation. It will require more than that, although it may well be that some amendments, if any are made, would show up in this piece of legislation.

I do not know if that is responsive to your question. The concern simply is that all sorts of information regarded as personal is provided, for a variety of purposes by individuals of this province, to the provincial government. Although the act deals with restrictions on collection and use of personal information by the government, as I say, it does not address the issue of the extent to which computer matching is possible or permissible. There are no safeguards against it occurring and we think it is an issue that needs to be addressed.

As to your second question, that opens up a whole new area that I think is frankly beyond the mandate of this committee to comment on.

**Mr Owens:** Thank you. Mr Chair, I would like to ensure that we highlight this recommendation and this issue to the minister when he makes his appearance here later this month. It is an issue we have all tried to grapple with. We need to bring it to the minister's attention with a view to perhaps implementing that task force or some method of gaining a better handle on exactly what is going on out there and what the capabilities are in the future, again with a view to ensuring that people's privacy is protected.

**The Chair:** Each committee member will have an opportunity to question the minister at the end of the month. This is just one of many issues that should be brought in front of the minister. I hope all members of the committee will use the opportunity to do so.

**Mrs Marland:** I wonder whether our deputation would like to comment on the exemptions to this act. We have just gone through the experience with TVOntario. We received an auditor's report on TVOntario. Because of the Act, the pertinent information in that report is not available to us as members, and obviously not to the public.



I wonder whether you have an opinion on such non-disclosure by government agencies, boards and commissions and crown corporations, where the public taxpayer dollar flows. In some circumstances the public has no real way of knowing how that money is being spent or even what money, quantitatively speaking. The whole business of some of these organizations—some 800 in the province, though not all exempt—is shrouded in secrecy, and yet it is public money that sustains their business.

**Ms Bonner:** I will ask Heather to speak to that one.

1600

**Ms Mitchell:** It has always been the bar association's position on the issue of coverage that the widest number of boards and agencies should be covered and information about them should be exempt, according to exemptions in the act. We have not addressed coverage in our brief, and perhaps that is an oversight on our part.

To deal specifically with TVOntario, we do not really know what the facts are in that case. The bar association is on record from its earlier brief several years ago as recommending the widest possible coverage of agencies and boards.

**Mrs Marland:** Are you saying, Heather, that by the widest coverage you mean the widest access to them, or the widest exemption? I do not know which way you are saying it.

**Ms Mitchell:** As far as coverage is concerned, the greatest number of ministries, boards, agencies and commissions should fall under the act, and it is the information that should be subject to the exemption, not the institution.

**Mrs Marland:** So where the information would be of a very personal nature, there would be reason for exemption, but in general you would see the exemptions as unnecessary.

**Ms Mitchell:** I guess I am not expressing myself clearly. Exemptions go to the kind of information that any institution has, whether personal information subject to the privacy exemptions, or commercial information subject to the exemptions for commercial confidentiality. All those apply to information but, with respect, I think what you are addressing is whether the institution itself should be subject to the provisions of the act. The bar association is on record as saying that as many institutions as possible should be subject to the act, and the decision should be made about the information, not about whether the institution is covered at all.

**Ms Bonner:** I believe your question was two-fold, not just the coverage of the act in terms of the number of institutions that are subject to it, but also our position on the current exemptions in the act. Am I correct?

**Mrs Marland:** Yes.

**Ms Bonner:** What you have to take from our submission is that we have no real problems with the current exemptions in the act. There were no glaring discrepancies we could see, or misapplications or unwarranted applications of the exemptions. I think the one we have pointed out in paragraph 3 of our submission in relation to the personal information exemption is that it tends to be used too broadly. We are suggesting that the Management

Board of Cabinet remind the co-ordinators that the exemption should not be given broad-brush coverage to hold back types of information that would otherwise be disclosed, and that they should be reminded that you can protect a person's privacy by severing and deleting certain information and still disclose the content of the record. In relation to the application of the specific exemptions under the act, I think that is the only example we have of one that seemed to be too broadly applied.

**Mrs Marland:** When I re-read Hansard I will probably be clearer, but basically you do not have any problems with those government agencies, boards, commissions or crown corporations presently exempt. You think some of them should be exempt from the act.

**Ms Bonner:** No, I am sorry. Again, that goes back to Heather's response to your question. Our position has always been that all agencies, boards and commissions be subject to the act. I was picking up on the second part of your question, which was the exemptions, once an institution is subject to the act.

**Mrs Marland:** I see, all right. Thank you.

**The Acting Chair:** Thank you, Mrs Marland. No further questions? On behalf of this committee, I would like to thank the Canadian Bar Association—Ontario for making its presentation.

LITA-ROSE BETCHERMAN

**The Acting Chair:** I call Ms Lita-Rose Betcherman, our next presenter. Good afternoon. You will be allowed half an hour for your presentation. You could use the whole half-hour for your presentation, but what we would like is a shorter presentation, allowing time for questions and answers from each of the parties.

**Ms Betcherman:** Certainly. I want to say it is a privilege to appear before the standing committee. I requested the opportunity to appear because I believe that the writing of Ontario and Canadian history is being seriously impeded by the Freedom of Information and Protection of Privacy Act, which you are now reviewing, as it stands at present.

To explain my interest in making this submission to the standing committee, I hold a PhD in history from the University of Toronto and I have written two books on Canadian history of the 1930s, which involved research at the Archives of Ontario prior to the passage of the act in question.

Returning to the Ontario archives recently to conduct some research, I discovered that documents to which I had had free access when I was writing my books were now restricted under the FOI act. I was advised that there was a 75-year restriction—I stress that, a 75-year restriction—on entire collections of records.

If I wish to see a document less than 75 years old in, for instance, the Attorney General central registry files, I would have to make an access request. I was told quite frankly that because of the backlog of access requests, it would take approximately a year to get an answer. Even if the document is made available, the names may be blacked out. I can tell you that a nameless document usually brings the historian to a dead end. In fact, I could not have written at least one of my history books to which I have referred—



and I may say that both books are used in the universities, colleges and high schools of this province—had I been under the FOI act as it stands now.

This stumbling block to historical research at the Ontario archives arises from the FOI act in its present form, as I have suggested. To protect the privacy of individuals, the act of course prohibits disclosure to third parties of government records containing personal information. The definition of personal information is extremely broad; indeed, it boils down to anything that identifies individuals.

I understand and appreciate the reason for this. As a citizen, I would not like confidential documents about myself made available to third parties, but the problem is that the act does not distinguish between active files in government offices and dormant files transferred to the archives for historical and archival purposes.

Second, subsection 2(2) provides that this prohibition on disclosing personal information to a third party is only lifted when the identified individual has been dead for more than 30 years.

To fit its historical and archival material into a framework that was not designed to accommodate it, the Ontario archives devised the present blanket restriction on access. Not knowing whether the individuals identified in the documents were dead or alive, the archivists have reasoned that if they establish a 75-year rule, they will not fall afoul of the death-plus-30 formula in subsection 2(2) of the act. The conjecture, as you can appreciate, is that a person dead 30 years would have reached adulthood 45 years previously, and that adds up to the 75-year restriction. For a researcher like myself to prove that all the individuals named in the documents I would like to see have been dead for 30 years is a practical impossibility. It would be a research project in itself just to trace a few of them.

1610

At present, the long arm of this restriction goes back to 1916, so that even a historian of the First World War period is adversely affected. I suggest that the 75-year restriction on disclosing personal information overly prolongs confidentiality. After all, when these records arrive at the archives, they are already non-operational and dormant, saved from destruction only because of their historical value. Moreover, it should be recognized that personal information is time-sensitive. Documents that were meant to be confidential when they were created are no longer sensitive material decades later. The passage of time dissipates the need for protecting individual privacy.

The 75-year blanket restriction has caught all kinds of innocuous material in its net. For instance, what could be sensitive in today's world about a speech given by a senior bureaucrat in 1917 on the history of the Jews? Yet when I asked for these files, I received a slip informing me that I had ordered restricted records.

Handling historical material in this fashion is unprecedented and retrogressive in my view. Before the act came into effect, government records at the Archives of Ontario, as in most archives, were, with few exceptions, publicly available when they were 30 years old. True, there was no guaranteed right of appeal under the 30-year rule. The originating ministry could withhold any document at its

discretion. But for all practical purposes, the appeal procedure under the present 75-year rule severely hampers research, since access delayed is access denied.

Several archivists have acknowledged to me that the 75-year restriction and the time-consuming access request procedure is causing graduate students—and I think this is serious—to turn away from Ontario history of the past three quarters of the century. They are backing up into 19th-century history in the interests of time.

The freedom of information legislation was certainly not intended to create an obstacle to historical research. The 1980 report of the Williams commission, which laid the groundwork for the Ontario Freedom of Information and Protection of Privacy Act, recommended special provisions for historical material, as opposed to contemporary records. The report states at page 240:

"It is our intention to ensure that access to archival material relating to identifiable individuals for research purposes will not be hindered by our proposed privacy protection scheme."

The Williams commission never envisaged the 30-year rule being extended to 75 years. Indeed, it found 30 years "too long a period during which to restrict access by the public to historically valuable information." The present 75-year restriction on access applied at the archives is not written into the act, and as a researcher using the resources of the Ontario archives, I pray it never will be.

Although the federal Privacy Act has a clause similar to subsection 2(2), this has not led to a similar restriction on archival material. The important difference appears to be that subsection 8(3) of the Privacy Act specifically states that government records in the National Archives which contain personal information may be disclosed for research purposes under certain conditions. In other words, it permits discretionary disclosure of personal information by the NAC.

According to the NAC guidelines, subsection 8(3) was introduced because otherwise the Act would be "too restrictive in regard to disclosure of personal information to allow historical research to be conducted at the National Archives."

The Ontario FOI act makes no such provision for historical research. In fact, the combined effect of the federal Access to Information Act and the federal Privacy Act is far more friendly to scholarly research than the Ontario legislation.

In criticizing the FOI act from the point of view of a historical researcher, I am aware that it is possible under regulation 10 of the act to sign a research agreement with the Ontario archives. A research agreement giving a bona fide researcher access to government records is one way of balancing the competing principles of the act, that is to say, freedom of information versus protection of privacy. But in my view, restrictive regulations make such agreements unsuitable for historical research. For instance, by the terms of the agreement individuals cannot be identified in your published work; that is to say that someone who wrote a letter in the 1920s or is mentioned in it must remain nameless in your book or article.



Worst of all from my point of view, the researcher is prohibited from data linkage—that is, from contacting individuals still living or their surviving relatives—without written permission from the archives. While this is an appropriate precaution in the case of lists of welfare recipients or psychiatric patients, it is surely an unnecessary impediment in the case of archival material. Not only would this cut off valuable leads, but it would hamstring the researcher from interviewing subjects who might have been located through other sources. In my opinion, to sign a research agreement with the archives under the present regulations would seriously inhibit free historical research.

I would now like to make some recommendations. I urge the standing committee to recommend changes to the act to provide more reasonable access to government records preserved at the Ontario archives. It is of prime importance, therefore, to make a distinction in the FOI act between archival holdings and current records in government offices, as the federal legislation does. I point in particular to subsection 8(3) of the Privacy Act.

Ideally, there should be open access to archival holdings except for certain documents whose restriction could be justified under, say, an injury test or a time-sensitivity test. But it is impractical to suppose that the small Ontario archives staff could sift through the masses of records and classify each file individually as the National Archives staff does. Most reluctantly I acknowledge that some fixed time limits on accessibility may be necessary.

Any time limits on access, however, should be based on the age of the document and not on the conjectural lifespan of individuals. I submit that subsection 2(2) of the act should be removed, given the difficulty of proving date of death in the case of private individuals and the section's effect in lengthening access restrictions to 75 years on historically valuable material in the Ontario archives. The question is, how long should the time limits be on government documents? Returning to the 30-year rule at the archives would certainly seem to be the outer limit, but 20 years might be considered sufficient for all historical and archival material, as under the act even cabinet records are opened after that period of time.

For access to documents within the restricted period, the appeal procedures would of course apply. However, the present year-long delay in getting a response to access requests must be remedied by mandatory, or at least more effective, time limits. For one thing, reducing the restricted period from 75 years to 30 years or 20 years should lessen the number of appeals.

In conclusion, far from liberalizing access to the historically valuable government records at the Ontario archives, the Freedom of Information and Protection of Privacy Act has so far placed new restrictions on access. I was heartened to read in Hansard of June 19, 1991, that the Information and Privacy Commissioner expressed to the standing committee his belief "that access under the act to archival or historical records poses unique problems that should be examined and addressed by the committee."

Thank you very much for your time. If I can answer any questions, I would be happy to.

**Mr Morin:** Dr Betcherman, on how many occasions did you have to consult the archives for certain research and were told that the information was not available because of the 75-year rule?

**Ms Betcherman:** I would say about three times in the last immediate period, say a month. As I said at the beginning, I recently returned to the archives to conduct some research.

**Mr Morin:** Were you given any reasons for the 75-year rule?

**Ms Betcherman:** Oh, yes.

**Mr Morin:** What did they tell you?

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**Ms Betcherman:** The reason is the prohibition on disclosing personal information which binds the archives because there is no exemption to historical or archival material under our act. There is also, of course, section 22 which I referred to.

**Mr Owens:** In terms of just researching people who would have historical value, presumably you would not have an interest in digging into the background of John Q. Smith, average person, but you would John Robarts or somebody like that, whom you wanted to do research on. As a public figure, I do not understand why that information would be denied to you when so much of our lives here is very public, for better or for worse, I might add.

**Ms Betcherman:** Yes, I agree. It appears to me that the archives has been forced to make this kind of blanket restriction which you can get out from under through this very long, prolonged access request procedure, but that is exactly my point, sir.

**Mr Owens:** Have you been faced with requests for large charges for your information requests?

**Ms Betcherman:** No, because as I answered a moment ago, this has come to my attention really recently, in the past month, and I have not yet made an access request, which would be the first step on the way.

**Mr Morin:** Would you see a type of exemption, for instance, where it would be left to the discretion of the archivist to decide if some information should not be available to historians like yourself; let's say an amendment that would leave it to the discretion of the archivist to decide whether he should give it to you or not, within that 75-year rule? I understand your point of view that sometimes some information would be available but, because of the limit of the 75-year rule, they say, "We can't do anything," unless it was left up to their discretion to discover if that document is really secret or there should be an exemption given.

**Ms Betcherman:** That is exactly what is happening now, but it could take a year.

**Mr Morin:** But they do not have any discretion whatsoever.

**Ms Betcherman:** They apply the exemptions under the act and they run into what I just discussed, that this personal information is one of the overriding exemptions. But subsection 2(2) of the Freedom of Information and Protection of Privacy Act lends itself to the kind of thing



you are talking about. The federal Privacy Act does not have any time restrictions such as 30 years, 20 years or 75 years. I think the kind of archivist's discretion is available without time limits. But my point is that, given the small staff at the archives at the moment, and I appreciate the burden on them, it would be impractical for them to have to vet each document like this. That is why I most reluctantly suggested a time limit of 20 or 30 years.

**Mr Frankford:** Am I right in understanding that there is protection even for things like newspaper articles that mention individuals?

**Ms Betcherman:** I can give you an exact answer to that. One of the files I saw had newspaper clippings among other papers, like personal correspondence. Yes, of course, you could go to the newspaper files and see them, but there are newspaper clippings even in these restricted files.

**Mrs MacKinnon:** Can you tell me, please, whether this legislation was brought about by the federal Privacy Act or by the provincial act.

**Ms Betcherman:** I am referring only to the provincial act except where I used the federal act as a point of comparison. The restrictions at the Ontario archives that I have discussed today are strictly provincial.

**The Acting Chair:** Dr Betcherman, on behalf of this committee, I thank you for taking time out this afternoon to give us your presentation.

#### HASTINGS AND PRINCE EDWARD LEGAL SERVICES

**The Acting Chair:** Our next presentation will be from the Hastings and Prince Edward Legal Services. Good afternoon. You will be given a half-hour for your submission. You can either use the full half-hour for your presentation or else make a shorter presentation and allow time for questions and comments from each of the opposition parties.

**Mr Little:** My name is David Little. I am a staff lawyer at Hastings and Prince Edward Legal Services in Belleville, Ontario. There are four lawyers and one CLW, community legal worker, at the clinic. We are one of 70 legal clinics funded by the Ontario legal aid plan and we do work exclusively for low-income residents of Ontario in areas of interest or of chronic concern to them.

Our mandate is threefold. We do case work, and most of our case work of about 400 to 500 active files is in the area of a general welfare assistance, Family Benefits Act, unemployment insurance and workers' compensation. We also do public legal education on these topics and law reform activities.

The clinic is currently involved in a matter of profound privacy implications for our client group in an issue which has received widespread notoriety throughout the province and that is the case of the Hastings county welfare list. The Hastings county council passed a resolution on September 5, 1990, requiring that the administrator of the welfare department in the county provide a list to the county councillors of all the people who are on welfare or receiving any kind of welfare assistance in the province.

I should say at this point that I realize I am talking about the Municipal Freedom of Information and Protection of

Privacy Act technically, but in so far as it raises deficiencies in that act, I would respectfully submit that it raises deficiencies in the FOI act. In addition, the cross-pollination between provincially run and municipally run assistance teams is such that the acts are intertwined not only conceptually but practically speaking as well.

In any event, the reaction to this resolution by the county council was very swift and it was filled with great anxiety. The reason for that anxiety is that the council in general and the councillors in particular have expressed extreme ignorance of welfare legislation, the needs of welfare recipients and the system of welfare delivery in Ontario.

We have, for example, included several quotes in our submissions that the county councillors have said; things like: "This is a cash-for-life county. We're dealing with clients who sit around and drink beer, and we're going to have to ferret out the abusers of the system," etc.

The county councillors have made it known that what they are after here is to police abuse. There is nothing to indicate that Hastings county is any different from the 3% to 4% abusers that the Social Assistance Review Committee researched and spoke about in its report. County councillors have made comments like, "11% of these people are ineligible and 29% are in the grey area," and various other inflammatory comments which I will leave you to read in my submissions.

We have been active in fighting this both in the courts and in the public forum. In the court system, an injunction was granted last November preventing the welfare administrator from providing this list to the county council. That was on an interim basis only. There is a full hearing scheduled for October 28. The Canadian Civil Liberties Association has intervened, as have various other coalitions against poverty.

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In the meantime, much to our disappointment and frankly to our surprise, we found that the Municipal Freedom of Information and Protection of Privacy Act has failed to protect us from this type of resolution. Part I of the municipal freedom of information act, which deals with disclosure outside of an institution, which corresponds to part II of the freedom of information act, contains in very clear and unambiguous language that information about one's eligibility for welfare is personal and cannot be disclosed. It is extremely strict about that.

The problem is that the Information and Privacy Commissioner has said that part I does not apply, but part II does. We find in part II that the clear, unambiguous language protecting one's privacy with respect to receiving welfare is absent. There is no clear, unambiguous language preventing that type of disclosure. Not only is that type of language absent in part II, but there are no procedural safeguards by which people can ensure that their privacy and whatever rights they have under that part are protected.

A person who thinks that information about himself is being wrongly used by an institution under part II, the part dealing with use and disclosure within that institution, has basically no remedies outside of going to court, which is a very time-consuming and cost-prohibitive process which one recipient has done, or asking the Information and Privacy



Commissioner to make some investigation and comment on what is happening; in other words, comment on the council's resolution in this case.

To begin with, the privacy commissioner has expressed pretty extreme reluctance to get involved in the situation at all. The Ministry of Community and Social Services asked the Information and Privacy Commissioner whether council's resolution was in compliance with the act, and the Information and Privacy Commissioner would not respond to the ministry. It was left to a private person to do it and a private person finally did it. The Information and Privacy Commissioner took about seven months to come up with what I submit is an extremely simplistic analysis, as I have outlined in my submissions.

The problem is in the wording of the section that allows officers or employees within an institution to use information which it needs and which is necessary to properly discharge its functions. The analysis the Information and Privacy Commissioner used is that council must need this information because it has passed the resolution saying that it needs it. I have attached to my submissions the part of the decision setting that out, but the Information and Privacy Commissioner completely failed to consider whether this was a legitimate function of the county. In other words, did the county council need this to fulfil its function within the general welfare delivery system in Ontario? Did it have the expertise to use this information?

Second, it completely failed to consider whether there was anything else at work or any other motive that would account for council's resolution. If we look even at the resolution, it requires a list of anybody who receives welfare assistance in the county to be listed. Somebody who is on the list because he is a recipient for five years is going to have his name beside a person unemployable for medical reasons, or a sole-support parent or a person who received a pair of work boots from the welfare department in its back-to-work program.

If you take the resolution at its face value, it would be impossible for the resolution, if complied with, to achieve the end they wanted. In other words, we cannot police welfare if it is going to show up the name of a person who is just getting a \$50-a-week top-up because he happens to work at minimum wage and has five kids.

What was bothersome about the route of asking the Information and Privacy Commissioner to investigate is that the response we got, which we considered to be clearly inadequate, really had no status in law. We could not appeal it. It was just an investigation or a comment. Whereas if a person's privacy rights under part I are going to be potentially violated, that person has a right to a hearing with the privacy commissioner; under part II there is no such remedy. The person is left essentially to go to court if he does not like it.

The question is, what can be done about the act to remedy a situation where county councillors are seeking to pry into a person's eligibility for welfare in a way that is improper? I would not favour any kind of tinkering with the act that would provide vaguer language than what is already contained in section 42 in the FOI act. We would submit that the proper thing to do would be to designate

departments of social services as distinct institutions when the county has appointed welfare administrators.

When the county appoints a welfare administrator under the General Welfare Assistance Act, that welfare administrator is responsible for determining all matters concerning eligibility and levels of benefit. It would make sense then, since the county has delegated this to a department which is physically distinct from the county and which has certain prescribed duties under the General Welfare Assistance Act to fulfil, to make that department a separate institution. That way, a person's personal information is protected from the inquisitiveness and perhaps the intimidating schemes of the county council.

We do not think that would cause any bureaucratic problems. In fact, in the northern communities the district welfare administration boards, which are boards appointed by different municipalities, already are distinct institutions. The county councillors in various districts could not request the name of welfare recipients in that district. We suggest the right thing to do in counties which have appointed welfare administrators under the welfare act would be to make those departments distinct institutions.

Those are my submissions.

**Mr Morin:** Do you know of any other municipalities that—if I could use the word—behave the same way as those councillors?

**Mr Little:** The other one I am familiar with is Renfrew county. I understand in Renfrew county the situation is arguably even more extreme, in that there is a person who is an administrator—take Barry's Bay, for example. Welfare in Renfrew county is administered by individual municipalities and townships. For example, the treasurer of the municipality of Barry's Bay is the welfare administrator. He is more or less a clerk who gives an application form to the recipient. Then the recipient has to go—and this is usually in front of other recipients—and present himself in front of the council and talk it over.

I understand the Hastings policy is also being attempted in several other eastern municipalities. I am not aware of any examples of that in southwestern Ontario or in the Toronto area.

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**Mr Morin:** I can understand that it would be an extremely humiliating experience for anyone—because it could happen to anyone—to have to appear before councillors, to have to appear before people who perhaps do not understand the issue at its fullest and then would be more less judges to decide if I or somebody else should receive welfare on a temporary basis.

**Mr Little:** Indeed, in the court material we can take it as a given that the county councillors have no expertise in welfare delivery. The welfare departments have extensive personnel trained in that area. In addition, the court file in this matter, which the Information and Privacy Commissioner showed no interest in, contains extensive affidavit evidence from recipients showing, frankly, that they were scared silly of the potential humiliation involved in this practice.



**Mr Morin:** I hope, Mr Chairman, this presentation will be underlined and brought to the attention of the commission. I think it should be looked at very seriously.

**The Acting Chair:** Duly noted.

**Mr Owens:** I recall this particular fairly sad chapter in our history in this province, as it was covered relatively extensively in the Toronto press. I was horrified to think of the kind of indignities that people are willing to heap on other human beings in the name of social progress or whatever their goal was.

I was curious about your comments on welfare recipients not having the right to have a hearing under the act. Could you explain that a little bit further?

**Mr Little:** Yes. If we could just talk very briefly about part I and part II. Part I is the disclosure of information outside of an institution. For instance, if I as a concerned taxpayer wanted to know whether so-and-so was on assistance, that would be a request under part I of the Municipal Freedom of Information and Protection of Privacy Act. If by some fluke, and I do not see how this could happen, the Information and Privacy Commissioner thought that what was potentially personal information could be disclosed outside of the institution, the person who is affected would have the right to make representations to the privacy commissioner under the act.

Under part II, when you are talking about information that is used and disclosed strictly within the institution, the council and the department of social services are the same institution. There are no such procedural safeguards for a person like our client, a welfare recipient, who would like to make representations or even have a hearing in front of the privacy commissioner.

**Mr Owens:** If I understand your last statement correctly, between the council and the Ministry of Community and Social Services or the welfare commissioner in a particular county, it is rather an intrasharing of the information, as opposed to passing it externally.

**Mr Little:** Yes. Comsoc technically would be a distinct institution. Welfare assistance is where there is some overlapping. The county council appoints a welfare administrator. The welfare administrator is an employee of council and his entire staff are employees of the municipal corporation. They are therefore one institution for the purposes of the act. Therein lies the problem, from our point of view.

What we really have here, I think, for all intents and purposes, is that these are two different institutions. All the protection, both in terms of the content of the act and the procedure for ensuring that protection, seems to accrue only in part I, only in the part where you are talking about giving information outside an institution. There really is no such protection for uses inside an institution.

**Mr Owens:** The Canadian Bar Association, which presented earlier this afternoon, had a couple of recommendations with respect to third-party notification and the issue of looking at how you keep information confidential without necessarily designating a particular institution or ministry. If the government were to implement those recommendations, would they cover your concerns, specifically with regard to the information not being able to come

out? I guess that is the exclusion option, excluding information around social assistance or anything. Whether it is that, workers' compensation or whatever the case may be, do you see that as answering your request?

**Mr Little:** That would be one way. If I understand correctly, those protections are already in if you are talking about disclosure outside an institution. If you are talking about putting those protections in part II, in other words, tinkering with the language a bit, I certainly admit that is a possibility. I understand the person following me may have some more specific recommendations in that regard.

**Mr Owens:** If you and your colleagues can turn this over in your minds, I guess my particular view is that I would not necessarily want to have people come to a hearing or an appeal, subject them to that process, if there is any way we can possibly avoid it.

**Mr Little:** Sure, that point is well taken.

**Mr Owens:** Getting rid of the council is probably another way, but that is for another day.

**Mr Little:** Yes. Another way of doing it, which is what I have suggested here, is to simply make two institutions. One is the county council and the other is a department of social services. So in the same way you have institutions defined in the act to include municipal corporations and then a second section, B, in which you are talking about school boards, planning boards, local roads boards, I would add another one, a department of social services, in counties that have appointed a welfare ministry. I would rest very easy with that amendment. I would have to look very carefully at the other amendments you suggested, but I certainly agree that is a possibility.

**Mr Morin:** I have a quick question. Do you mean to say that the law now is written in such a way that any other counties could make the same mistake as Hastings and Renfrew?

**Mr Little:** Indeed. In fact, the act sanctions that now.

**The Chair:** Any further questions? There being none, I thank you very much, David, for coming along and making your presentation to the committee here this afternoon. As soon as the report is tabled in the House, we will make sure you and your organization get a copy of the committee report.

To the members of the committee, the second page of the agenda somehow or other got left off, but we do have the Ontario Association of Fire Chiefs coming along to make a presentation at 5:30 this evening.

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#### CLINIC STEERING COMMITTEE ON SOCIAL ASSISTANCE

**The Chair:** The next witnesses are from the Clinic Steering Committee on Social Assistance. You have up to a half-hour to make your presentation.

**Mr Morrison:** My name is Ian Morrison. I am the executive director of the clinic resource office, which is a research and resource centre for the Ontario community legal clinic system, and a member of the Clinic Steering Committee on Social Assistance. With me today is Nancy



Vander Plaats. Ms Vander Plaats is a community legal worker from the Scarborough community legal clinic in Toronto and the chair of the Clinic Steering Committee on Social Assistance. There is another name on the list, Ms Josephine Grey, who has not yet arrived. If she does arrive, we will introduce her then.

We are basically following on from the presentation you just heard. We would like to address the same issue, and we are going to address it from a slightly different perspective. We would like to make somewhat different recommendations about our perception on how the problem could be solved, although we are largely in agreement with what you just heard.

The basic issue that we are concerned with is this question of how well the provincial and municipal protection of privacy acts in Ontario protect the interests of a particularly vulnerable group of individuals in Ontario, recipients of social assistance benefits.

Just to take a moment to explain who we represent, the Steering Committee on Social Assistance is a provincial committee. It is the co-ordinating body on social assistance matters for the Ontario community legal clinic system. The members of the steering committee are lawyers and community legal workers from clinics around the province. We are by far the largest group of legal advocates on behalf of social assistance recipients and other low-income people in Ontario.

Our committee does things like co-ordinating training and public legal education initiatives on behalf of the clinic system. We are closely involved with a number of litigation and law reform activities in this area. We speak on behalf of the clinic system. As an organization which deals with things on a provincial basis, I believe we have a special perspective on some of the problems that arise in this area. We would like to draw some things out a little beyond the individual instances you heard about with respect to Hastings and Belleville.

I understand the committee's current mandate is to review the provincial Freedom of Information and Protection of Privacy Act. Although we are going to be focusing on a particular problem which has arisen in a municipal context and which is obviously a matter that we are deeply concerned with, we suggest that this is an appropriate issue for your committee to hear.

First, as you know, the provisions of the provincial and municipal legislation are almost identical. The problem we are addressing is, I think, potentially a problem with provincial legislation. The provisions on disclosure are almost the same. So what we perceive as being the weakness in the legislation is something that is also a potential weakness in the provincial legislation.

The other reason we would think it is appropriate to consider the matter at this time is that, because of the way social assistance is delivered in Ontario, which results in the same clients looking to the province and to municipalities for different services in the same area, there is, as you heard, a considerable sharing of information between the Ministry of Community and Social Services and local municipalities, both ways. The administration process is really inextricably linked in practice. In fact, there are parts of the province, not Hastings and Belleville but other parts of

the province, where intake and processing of applications for social assistance go on in one office; joint intake practices.

The problem of privacy rights of social assistance recipients, as you heard, has been thrown into quite sharp focus by the actions of the Hastings county council. As you heard, the county council directed its welfare administrator to prepare a list of the names of all the welfare recipients in the municipality for presentation to the council.

The public statements of the council members on this issue have basically come down to suggesting two reasons for preparing this list. The first is that knowledge of recipients' identities will enable individual council members to make investigations to ensure that all recipients qualify to receive welfare. The second is that this knowledge will enable council members to alert welfare recipients to the existence of any jobs that come to the attention of council members.

The council has decided to pursue this course despite the fact that the municipality has a welfare administrator, appointed by the council with the approval of the Minister of Community and Social Services as required by the General Welfare Assistance Act. The administrator's staff is responsible for ensuring that only those in need are given benefits and that employable persons actively seek employment as a condition of obtaining benefits.

I would like to note that carrying out these responsibilities involves administration of a complex and detailed regulatory scheme which even experts in social assistance often find confusing. In fact, in a very recent decision from the Divisional Court of Ontario, one of the justices of that court described the general welfare regulation as Kafkaesque in its complexity.

Perhaps I will just interrupt my presentation to introduce to you Josephine Grey, who has just arrived. Josephine Grey is a founder and currently president of an organization called Low Income Families Together, which is one of the oldest self-help groups for social assistance recipients in the province. She is also working on contract on the co-ordination of consumer input to the Ministry of Community and Social Services in the current process of legislative reform, and part of her job, in fact most of her job, consists of going around the province and arranging meetings with social assistance recipients to talk to them about problems with current administration. Josephine has an unparalleled view of provincial issues, especially with problems around privacy and abuses of the legislative scheme for social assistance recipients.

To return to what I was saying, as you know, the action of the Hastings county council is currently before the courts. I am not going to discuss that court challenge. What I would like to discuss is the problem that it points out for us in the current privacy legislation, which we submit is relevant to the deliberations of this committee.

As you know, both the provincial and municipal acts empower the Information and Privacy Commissioner to comment on the privacy protection implications of proposed programs of institutions. A complaint was made to the commission in this case. In response to that complaint, the assistant information and privacy commissioner gave an opinion on August 1 of this year that the proposed



actions would not breach the privacy protection provisions of the municipal freedom of information act.

The part of the opinion we would like to focus on deals with the meaning of clause 32(d) of the act, which I will refer to as the need-to-know provision. The identical provision is in the provincial act as clause 42(d).

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Clause 32(d) provides that personal information shall not be disclosed to anyone, inside as well as outside government, except "if the disclosure is made to an officer or employee of the institution who needs the record in the performance of his or her duties and if the disclosure is necessary and proper in the discharge of the institution's functions."

In this case the commission gave us its opinion that the requirements of this subsection were met. I think the commission's opinion really boils down to one sentence: "The council...has enunciated a need for the information and stated that the transfer is necessary and proper to the discharge of the supervisory function. Thus, in our view, the requirements of subsection 32(d) of the act are met."

It seems that the commission's view is that nothing more is required to meet the standards of the need-to-know exception than a statement by the person requesting the information that he or she has a need to know.

We are very deeply concerned about the act, if this is a correct interpretation of it. Even assuming that the council could have some legitimate use for this information—a subject I will not go into, but I imagine you can guess what our position is on that—there is no objective analysis, in the opinion of the assistant commissioner, of whether disclosure of this personal information was really necessary apart from the council's assertion. Nor is there any explanation of whether any legitimate aims of the council could have been achieved in a way that would be less intrusive to the personal privacy of welfare recipients.

We have made some suggestions as to some other things that could have been done.

If the council thinks its welfare administrator is ineffective at detecting fraud, it could take steps to improve the welfare administrator's operation. They could assist the administrator by passing on any relevant information that comes to their attention.

Any job opportunities that came to the attention of council members could be passed on to the administrator, who could maintain a registry of these jobs for welfare recipients.

There is no consideration of whether a partial list of names would meet any legitimate requirements of the council. I note for you that even though the council seemed primarily concerned with people sort of skiving out of their obligations to look for jobs and not working when they could, a very large proportion of welfare recipients are not required by law to look for work because they are disabled or because they are single mothers with young children. They fall into the categories that are exempted from those requirements. As you have heard, there are also people who work full-time and receive supplementary assistance because their incomes are so low. There is absolutely no attempt to confine this list to something reasonably related to what the council was after.

I will not go on. The purpose here is not really to go into welfare administration; it is simply to point out that there are a lot of things that immediately leap to mind as possible, less intrusive alternatives that are not addressed anywhere in the process that was carried on under this legislation. If the commission's opinion is correct, that is, if a need to know can be established for the purposes of privacy legislation simply by asserting it, then we suggest to you that the protection afforded personal information to these very vulnerable people is very weak indeed.

Before putting forward our suggestions for dealing with the problem we have identified, I would just like to return very briefly to the first principle of why the protection of privacy matters. We will undertake this examination here in the context of social assistance, but obviously the same points could be made with respect to other kinds of protected information under the legislation because, in addition to social assistance recipients, there are many other very vulnerable people, psychiatric patients and so on, about whom information is protected in the same way.

It is a fundamental fact that the receipt of social assistance is both personally shaming for many people, especially first-time recipients who have never had to apply for welfare before, and socially stigmatizing. An excellent reference with regard to this is a 1988 report of the Social Assistance Review Committee called *Transitions*. That committee spent a long time and heard from hundreds of recipients and recipients' organizations across the province precisely on this issue of lack of privacy and stigmatization in the welfare administration process.

It is very important to emphasize—and this is where I would like to talk a little from our perspective as people who observe things across the province—that breaches of privacy in this context have real consequences for people. Sometimes we know, despite the confidentiality rules, that the names of welfare recipients have come to the attention of people who have no business knowing that information. We know of situations where welfare recipients and their children have been subjected to threats, physical assaults, other kinds of harassment, simply because they are welfare recipients. It is unfortunate but true that there are many cases we know of where this identification of an individual as a welfare recipient has come from municipal councillors in local municipalities.

More generally, overwhelming evidence has been documented in many places that has been part of court procedures that recipients of social assistance are routinely discriminated against in relation to housing and many other services. It is self-evident that the more widely lists of recipients' names are disseminated in any context, especially outside the classes of people with a specific and legitimate need to know the information, the greater the danger of inadvertent or advertent disclosure to persons with no business at all with the information.

Even within the particular context of disclosure within the institution in this situation, we know—and I know that Josephine could reiterate this with innumerable examples—recipients deeply fear political interference with social assistance delivery. Welfare applicants have been asked whether they belong to self-help organizations that are



unpopular with local delivery agents. Recipients around the province who have participated in the legislative reform process or who have come out and spoken about local problems have been threatened locally with retaliation for making complaints. There are serious issues here that arise from even the potential violation of privacy in this context.

These clearly are the reasons why it is public policy in Ontario that this kind of information should be protected. Under both the provincial and municipal legislation, release of any information regarding eligibility for social assistance benefits is deemed to be an unjustified invasion of personal privacy. The regulation to the General Welfare Assistance Act specifically prohibits any kind of public release of the names of welfare recipients.

As you heard, the former Minister of Community and Social Services expressly stated her opposition to any kind of even internal release of social assistance recipients' names in the manner proposed in the Hastings case. A recent report of that minister's advisory group on new social assistance legislation concurred in condemning this kind of thing.

To conclude, having belaboured an obvious point, there are compelling and well-substantiated reasons why the classes of information deemed to be protected personal privacy and why the kinds of things that are deemed in both acts to be unjustified invasions of personal privacy are in there. It is an important statement of public policy. We are very disappointed in the lack of weight given to the reasons why these things are in the legislation and this process.

In so far as the problem we have identified is a problem in both pieces of legislation, we would like to make some specific suggestions that we urge you to consider as recommendations in this area:

First, and this applies to both FIPPA and municipal FIPPA, the legislation should be made clear that when dealing with a complaint of breach of privacy, the commissioner is obliged to explore the legitimacy of reasons given for the dissemination of personal information without the consent of the individuals involved.

Second, and this again applies to both FIPPA and municipal FIPPA, the act should require the institution to prove to the commissioner—and the onus should be on the institution here—where a complaint has been made or where it has been asked for an opinion, that any action which has the potential to invade privacy must be the least intrusive reasonable alternative to achieve whatever aim is deemed to be legitimate there.

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Those comments apply to both pieces of legislation. I will go on and make my suggestions about the comments for municipal FIPPA. I do not know whether you consider that to be within your mandate or not. We urge there, as one possible solution to this problem, that at a minimum, the legislation could specify by regulation those classes of employees who have a need to know in this area. That would be a relatively simple thing to do, to state that the only people who will be deemed to have a need to know will be employees of social assistance departments or commissions. That would automatically raise a presumption that other people, like municipal councillors, would

not have a need to know identifying information about particular individuals.

We also suggest, as a corollary to that, that the act ought to obtain provisions to protect against a certain obvious end run around that to prevent provincial or municipal officials from making a general consent to release of personal information a condition precedent to obtaining any kind of social benefit.

I add and conclude that although we have taken a slightly different approach, we support the recommendation made by the Hastings and Prince Edward Legal Services in the submission you just heard. Their proposed amendment would afford welfare recipients in this situation essentially the protection of part I of the act and would significantly improve the privacy rights of welfare recipients. What we have suggested is a more modest proposal; however, we urge that this would be a valuable thing to consider not only for this context but for the application of this provision of the legislation in other contexts.

That is all I have to say. Thank you very much for listening. I will be glad to answer questions.

**The Chair:** Thank you very much indeed. We have some time for questions.

**Mr Owens:** The test you set out on page 4, clause 42(d) of the act, is not a very strenuous test in any sense of the imagination. It is my humble opinion, not being a lawyer, that this council probably did not even meet that test.

My question, and I think you touched on it during your presentation, is around the issue of alternatives. Looking at the request, I probably would have been asking for numbers as opposed to names. What are names going to do? You want to get a general sense of how many people in your county are receiving social assistance. That would be a valuable piece of information, not John Smith and Mary Jane and the other 1,500 people there.

Is there some way we can look at that type of section around who exactly needs to know? I am not really sure council needs to know. Do they meet that test? I am not sure. I hope to God we never fall into this problem in Scarborough and that this is be restricted to smaller centres, but I think it is an issue that needs to be dealt with, just to avoid the situation we have had in Hastings.

The one concern I have is around the issue of MPPs and other officials. At my office we do a lot of FBA and GWA work. How would your recommendations impact on my ability or the ability of my staff to aid constituents in getting through the system? There is an exchange of information and, more often than not, the person at FBA or GWA will simply pass the information on to my constituency worker, who will then pass it on to the recipient.

**Mr Morrison:** It depends on exactly what you mean. If a recipient comes to you or your constituency worker and requests assistance, this issue does not arise because the person has then clearly consented to your being aware of his identity. He is also consenting in the same way when he comes to us. We require their consent to get information from the FBA office.

**Mr Owens:** But that is an implicit consent. I do not want to get into the situation of having to get written consents



all over the place. It would be pretty horrendous. We do a lot of our work by telephone, as a number of people cannot get out of their homes, for whatever reason.

**Mr Morrison:** I do not believe what we have suggested would directly affect that, because the situation we are discussing and the specific recommendations we made are with respect to things happening within the institution or between related institutions. There are separate provisions in the legislation dealing with MPPs. I do not see that what we are talking about would directly go to that. Do you have any comment?

**Ms Vander Plaats:** Yes. I think you should have to get consent in most cases. I just think it is an important thing to be done. When we are assisting people in community legal clinics we get consents, and I think you should. In that case you are assisting the client, so you have a right to that information on behalf of your actions with the constituent, but not because you are an MPP. You do not have a right to call welfare or family benefits and find out something about someone who is on there unless you need that because you are working for them. Therefore you should have consent. Otherwise—I know you would never do it—it is possible that somewhere a politician at some level might use that excuse to get it. You need formal protections. They are a pain sometimes, but they are necessary.

**Mr Morrison:** I think our position certainly would be that it would be no more proper for a member of this Legislature to ask the Ministry of Community and Social Services, "Could you please give me a list of everybody who receives family benefits in my riding?" That would just be antithetical to the protection afforded by the legislation.

**Mr Owens:** We would hang them out to dry.

**Mr Villeneuve:** Thank you very much for your presentation. I am sorry I was not able to be here for the whole thing, but I find it intriguing that you are emphasizing that I as an MPP would have to have consent, when indeed I represent a larger riding, and there is no way I want to know everyone who is collecting social assistance in my riding. There are enough of them who phone us now.

I find it very difficult and frustrating whenever I hear, "Oh, you don't have consent. I'm sorry, we can't discuss the case," and I have a legitimate need to know something to assist someone. At this stage of the game, freedom of information or lack of freedom of information makes it very difficult for me to try to help people and to do my job. That is the other side of the coin you just spoke of, and I find it very frustrating at times. The riding sprawls out 150 kilometres from the Quebec border to the town of Prescott, all rural. Fax may assist to some degree, but many people who receive social assistance do not have vehicles. They probably do not even know what a fax machine is. It is a problem. Maybe you could comment on it.

**Mr Morrison:** I agree, it is definitely a problem. We face the same problem. As you know, we have clinics in your part of the province, and it is a problem they have too. Where I would respectfully have to disagree with you is on your statement of the flip side of the coin. When somebody comes to you and says, "Please help me," and then you cannot get access to information in the possession

of the bureaucracy, that is one thing. But where an official or an elected official—and this is not with respect to anybody who has asked them for help—says, "I want to know who all the people are on social assistance"—

**Mr Villeneuve:** That is a different story.

**Mr Morrison:** That is the only issue we are addressing. I agree with you that the consent provisions are sometimes applied in ways that make it very difficult for advocates to do their jobs. I am not sure that is so much a problem with the act as it is with the procedure for what is considered to be consent, but I would not say that what we are saying makes the problem worse.

**The Chair:** Mr Morrison, thank you for coming along and making your presentation here to the committee this afternoon. When the committee tables its report in the Legislature, we will make sure that a copy is sent to the Clinic Steering Committee on Social Assistance.

1720

#### ONTARIO ASSOCIATION OF FIRE CHIEFS

**The Chair:** The next delegation is from the Ontario Association of Fire Chiefs.

**Mr Horrocks:** My name is Ronald Horrocks. I am the fire chief of the city of Ottawa. I am also a member of the board of directors of the Ontario Association of Fire Chiefs. My colleague is Tom Powell. He is the fire chief in Scarborough and he is also a member of the board of directors of the Ontario Association of Fire Chiefs.

**The Chair:** You have up to one half-hour to make your presentation, but it would be nice to leave some time for members to ask questions.

**Mr Horrocks:** The presentation I have to make is actually quite brief. I have tried to keep it to the point.

The Ontario Association of Fire Chiefs represents members from the smallest villages in the province through to the largest cities. On behalf of the members of the association, I would like to take this opportunity to thank you for affording us this time to make our presentation.

The duties that firefighters perform today have changed a great deal from years gone by. Some time ago the province introduced what is known as a tiered response system. With the tiered response system, the firefighters are called upon to work very closely with the ambulance service.

That system has merit because the citizens of the province receive a better service for their tax dollars. They receive it when they are most in need, and that is when they are having a heart attack, difficulty breathing and so on. The fire stations are strategically located, and this affords the fire service the opportunity to get to the problem in a short time. There is not a day that goes by that citizens are not receiving that service from a fire department somewhere.

These changes have had the effect of exposing firefighters in the province to a far greater number of carriers of communicable diseases. This increased exposure, along with the increasing numbers of carriers of the AIDS virus, hepatitis B and others, has placed the firefighters, quite frankly, in a very unenviable position. Unlike the controlled atmosphere of a hospital setting where necessary precautions can be taken to preclude the spread of disease,



in most cases the firefighters are unable to protect themselves adequately because of the nature of the tasks they do and because of the locations and conditions in which they carry out these services.

We all know that firefighters are called upon almost daily to rescue victims from burning buildings. These rescues are usually performed under very, very difficult conditions. Most often, it is in a smoke-filled atmosphere. The rescuer cannot see the victim clearly. He cannot tell whether or not the victim is bleeding. In most cases, when a victim has been exposed to the effects of smoke and heat, there is a lot of mucus present, and the rescuer can often come in contact with these body fluids, thereby increasing the chance of communicating a disease, should the victim be a carrier.

In some cases, it may be something as simple as a bleeding nose, or the victim may be bleeding from a cut from broken glass. There are many areas where the victims can suffer cuts: torn metal, nails, sharp edges and so on. A lot of these exist in burning buildings under those conditions.

In these cases it is difficult if not impossible for us to protect the firefighters adequately from cuts, because the cuts do not happen only to the victims but to the firefighters as well. It is well known that latex gloves, for example, will not resist even a pinprick in a hospital setting, so you can imagine the level of protection they would afford in fire conditions.

When removing victims from damaged vehicles at an accident scene, for example, the victims are often bleeding and the firefighters can become exposed as a result of tearing their protective clothing and cutting themselves on jagged edges—torn steel, broken glass and so on. It presents the same or similar problems as outlined when we are performing a rescue in a burning building.

It is evident that it is virtually impossible for firefighters to practise what we would call universal protection, such as ambulance personnel do, and assume that every person is a carrier and deal with them accordingly. Even if we did that, we cannot protect the firefighters entirely from cuts and so on because of the conditions we work under. Even the best protective clothing we can buy today does not provide that protection. So you can see that the firefighters are virtually helpless to protect themselves from exposure to these communicable diseases except in some very limited circumstances.

You might ask, how often does this happen? In our estimation, once is too often, and we want to do something about affording the firefighters some protection.

It is our understanding that under the present legislation—and I do not purport to be an expert on the legislation; I will make that clear at the outset—those members of the medical profession who become aware that the victim is a carrier are not permitted to inform the firefighters they have been exposed to a communicable disease. Under the Freedom of Information and Protection of Privacy Act, they are not allowed to pass that information on.

It is also our understanding that in relation to certain diseases, when a member of the medical profession becomes aware that a person is a carrier and that carrier had had intimate relations with a number of people, the medical officer can in fact contact those persons to inform them

to have themselves tested to ensure they have not contracted the disease. In our eyes, this seems to present a double standard, because the firefighters feel they have the right to know they have been exposed to a communicable disease, even though they were only doing their job and did not have intimate relations with the victim whose life they probably just saved.

In the interest of protecting one's right to privacy, we want you to know that in our estimation it is not necessary for us to know who the carrier was. The firefighters only want to know that they have been exposed. This is being done in the United States at present. We feel that our firefighters should have that same protection. We respectfully call upon this committee to bring in the necessary changes to permit that to happen.

1730

**Mr Frankford:** Thank you very much, and welcome to the committee. Perhaps I should start by saying that I am a medical doctor, and I am also from Scarborough.

It seems to me that perhaps what you are dealing with comes into more than one area. I hope it is clear to you that this committee is looking at the Freedom of Information and Protection of Privacy Act, which I think is largely about access to information within government departments or to which the province of Ontario has direct access. Starting from that, I think there are some built-in barriers to what you are proposing.

As a physician—and you talk about the physician's confidentiality requirements—I think that is really outside the area of the freedom of information act. That is governed by professional regulations, so in the strictest sense, there is strict client-professional privacy.

In regard to the conditions you are talking about, reportable diseases, that confidentiality is not absolute because there is an obligation on physicians to report those conditions to the medical officer of health. I think there was some confusion in some way. On one occasion you used the term "medical practitioner" and another time you said "medical officer."

**Mr Horrocks:** I would generalize and say people in the medical profession. Where it gets stuck is at the medical officer of health, actually.

**Mr Frankford:** I think the questions you addressed really have to be with the medical officer of health, who in a sense has that public responsibility to be informed about conditions. Do you want to comment?

**Mr Horrocks:** Under the act, it is our understanding that he cannot pass that information on to the firefighters.

**Mr Frankford:** I think that is probably correct.

**Mr Horrocks:** That is where we would like to have that dealt with.

**Mr Frankford:** We probably would need some guidance as to where the particular freedom of information acts would impact on this.

**The Chair:** Someone from Management Board may want to clarify that.

**Mr White:** I am Frank White, from the freedom-of-information and privacy branch of Management Board of



Cabinet. I do not know if I actually agree with that statement. I think the situation deals with the Municipal Freedom of Information and Protection of Privacy Act, because the medical officers of health are covered by that particular act. I have not heard anything about their not being able to disclose—for instance, it might even be non-personal information, just that someone has come into contact with a communicable disease. There is nothing I can see in the municipal act that would prevent them from disclosing that in a non-personal information way. I believe, in fact, under section 32 of the municipal act and 42 of the provincial act, you could probably make a case for disclosing that a person has come into contact with a communicable, or potentially communicable, disease.

**Mr Frankford:** Presumably one could do it in the other way, send out negative information that the person has not been reported.

**Mr White:** I think the situation here is that some medical officers of health may feel there is something in the act which prevents them from disclosing personal information, and without talking to someone who is saying that, I cannot find out what his reasoning is, what section of the act would prevent that.

**The Chair:** I have to go to the House; I am speaking next. I have a question you might be able to answer or, if not, the legislative research people could. Where in the United States is this done? Is it a federal statute or does it vary from state to state? I do not know whether you can answer that or not.

**Mr Horrocks:** I cannot give you the specific states, but it is from state to state. We can get that information to the committee.

**Mrs MacKinnon:** Do you feel you need a specific exemption for firemen in the particular instance you are speaking of here?

**Mr Horrocks:** It is our understanding that the ambulance people cannot get that information either.

**Mrs MacKinnon:** No, but do you feel that we should build something into the freedom of information act that would give that specific exemption for firefighters?

**Mr Horrocks:** Yes.

**Mrs MacKinnon:** Then what would we do about policemen?

**Mr Horrocks:** That is why I say the ambulance people and the police are the same, emergency workers. There is a committee called the emergency safety services liaison committee which is under the auspices of the Ministry of Health. It brings together police, fire and ambulance services. This evolved from that committee. You will be hearing presentations from other members as well on this subject.

**Mrs MacKinnon:** It almost appears that we have to be prepared to make exemptions for people who deal with emergency situations.

**Mr Horrocks:** That is right. That is where we are coming from.

**Mr Owens:** Coming from a health care institution just down the road, I am aware of some of your concerns, as

they were expressed by members of the security service employed by the hospital. I just think we walk a very fine line on this issue with respect to the need for your workers to feel they are protected versus the need for the rights of the patient or the victim to be protected.

I guess I am not clear, and I am sorry I missed your presentation, but are you looking at, in the event that somebody has had blood dropped on him or has had mucous spat at him or in performing some sort of procedure—my understanding of the state of the art of technology these days is that there are barriers one can employ when performing mouth-to-mouth resuscitation. I guess I am just trying to struggle with that. Where do you draw the line? When do you start informing people, and is it a necessity?

**Mr Horrocks:** We are addressing more specifically cases where firefighters have been called upon to rescue people from damaged vehicles, for example, in auto accidents, or rescuing people from burning buildings when these people have been cut. When the victim is taken to hospital, if at that time it is identified that this person is a carrier of a communicable disease, we are asking only that the crew at the scene be informed that they were exposed so they can take precautions.

**Mr Owens:** What do you then propose to do with a crew of firefighters who are informed that the person they were working with is HIV-positive? That kind of information can be absolutely devastating to people.

My understanding of HIV is that you have to work extremely hard to get this type of disease. So what do you do with these people? I am not sure how many workers you have on your crew—10 or 15 people. What do you do with these people from the time they have been told they have been working with an HIV-positive individual? They have the first test done. It is recommended that one repeat the test six months later. You have a whole pool of problems to deal with, not only with the 15 workers but also the families of the workers who potentially may be involved, only to find maybe a year later that it was not necessary.

**Mr Horrocks:** What you are saying is correct, but we find the reverse is just as important. The families of those people who have been to these incidents and know nothing are always living in fear. We may find ourselves in the position of having to have them tested on a regular basis, which would be very costly. This way, if we know they have been exposed, we can just deal with the crew, with the people who were on scene, the ones who were immediately working with these people.

You mentioned that the chances are very slim. I mentioned that at the outset of my presentation. We feel once is too often.

**Mr Owens:** Are you aware of the statistics on the number of firefighters specifically in North America, say since 1982, who have developed HIV as a result of work-related, as opposed to lifestyle-related, issues?

**Mr Horrocks:** There is no doubt the numbers are very low. Again, we are saying, yes, they are low, but the number of carriers is on the increase, it is not on the decline.

**Mr Owens:** I am not suggesting that what you want is not a good thing, but I think one has to follow it through



the whole process and how you deal with the 20 workers or how many would be on the crew who have now been informed en masse. How do you deal with these people, and then how do you deal in terms of cost? You are going to have to look at replacing these people on the crew.

**Mr Horrocks:** They may not test positive and that will give them peace of mind.

**Mr Owens:** The nature of the virus is such that you may not test positive today but then your serotype may change the following day. Again, it is a whole issue of counselling and support of families that is involved. I just think we have to look at this very carefully, and this may not be the piece of legislation under which we should examine this issue. I think you make a good point, but there is a bigger issue there than just informing your firefighters that they have been in contact with a person who is HIV positive or has hepatitis B, which is more virulent than AIDS will ever be.

I think we have to look very carefully at how we proceed with this and consult. As you say, there will be other groups, the ambulance drivers and the police departments.

We should probably take a look at inviting folks from the Ministry of Health to come in, as well as some of the community organizations that deal with these specific populations around HIV and hepatitis B carriers.

**Mr Frankford:** Could I just make a general comment? I think perhaps one should not get stuck on these two particular diseases, although they get a lot of press. I was thinking of another example of something which could be contracted in the heat of the moment, which is rabies. I think that would have rather different health impacts, because there you potentially have a rather rapidly fatal disease where there is some active treatment that can be done. I am sure there are all sorts of other diseases which I cannot think of right now that could require all sorts of particular policy approaches.

**The Acting Chair (Mr Cooper):** Chief Horrocks and Chief Powell, on behalf of this committee I would like to thank you for taking time out of your busy schedule to give us your presentation today.

The committee adjourned at 1744.

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M-21 1991

M-21 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Wednesday 23 October 1991

## Journal des débats (Hansard)

Le mercredi 23 octobre 1991

### Standing committee on the Legislative Assembly

Review of Freedom of Information  
and Protection of Privacy Act, 1987

### Comité permanent de l'Assemblée législative

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée

Chair: Noel Duignan  
Clerk: Douglas Arnott

Président : Noel Duignan  
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Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron





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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 23 October 1991

The committee met at 1545 in room 228.

### REVIEW OF FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

### COUNCIL OF CANADIAN ADMINISTRATIVE TRIBUNALS

**The Chair:** I would like to call the first witnesses who I understand are from the Council of Canadian Administrative Tribunals. Welcome. You have up to half an hour to make your presentation. Maybe before you begin, you could state who you are and what position you hold within your organization.

**Mr Gosselin:** My name is Jean-François Gosselin. I am the chairman of the Council of Canadian Administrative Tribunals. It is known as CCAT. I am also a member of the Bureau de révision de l'évaluation foncière du Québec which is an administrative tribunal in Quebec. My colleagues today are Margot Priest, a vice-chair of CCAT and the chairman of the Ontario Telephone Service Commission. Also with me are Andromache Karakatsanis, a director of CCAT and the chair of the Liquor Licence Board of Ontario, and my colleague Bruce Budd who is a director of CCAT and vice-chair of the Pay Equity Hearings Tribunal here in Ontario.

I am very pleased to have the opportunity to address the committee today and present the brief of CCAT. I would like to give you some background and information about the council and then to outline our concerns and views on amendments to the Freedom of Information and Protection of Privacy Act, 1987.

The Council of Canadian Administrative Tribunals is a national organization of members of federal, provincial and territorial tribunals. The purposes of the council are to research and study matters of concern to the members, to provide opportunities to break down the isolation between members, to improve the education of members and to generally enhance the quality of administrative justice in Canada.

The council is managed by a board of directors, which represents all the jurisdictions of the members. It is governed by an executive committee. In the five years since its incorporation, the council has instituted an annual three-day educational conference, published a regular newsletter, the Tribune, and sponsored the Canadian Journal of Administrative Law and Practice. Current CCAT projects include the establishment of a centre for administrative tribunals in Ottawa that will be responsible for the basic training of tribunal members in administrative law and general procedures. CCAT also undertakes to assess and comment on policy and legislative proposals in the various jurisdictions that may directly affect administrative justice and the roles

of tribunals. It is this last purpose of CCAT that brings us here today.

The members of CCAT would first like to say that we applaud the goals of the Freedom of Information and Protection of Privacy Act, 1987. This is a very important statute; not all the citizens in CCAT member jurisdictions have the benefits and protections of such legislation. The twin themes of openness and sensitivity to individual privacy concerns are matters that tribunal members work with daily. Openness and accountability are maintained in the quasi-judicial setting of hearings and reasoned public decisions based on known evidence.

The act sets out the rules of the game for citizens seeking information from their government. It provides predictability and certainty to those who seek information and those who disclose it. We believe that certain rules need to be clarified and amendments made to the act to avoid potential problems for adjudicators carrying out their quasi-judicial tribunal responsibilities.

The specific concern of CCAT about the current Freedom of Information and Protection of Privacy Act, 1987, is its failure to clearly exempt from disclosure three types of information: (1) the notes and comments by panel members taken during the course of a hearing; (2) the record of communications among panel members in reaching decisions, and (3) the draft copies of reasons for decision.

CCAT supports technical amendments to the act that would specifically exempt these documents from disclosure under the act. We believe this is important to ensure that tribunal members are free from pressure that would inhibit the independence of decision-making that is necessary to maintain the integrity of an adjudicative body.

The first issue is members' notes. Panel members frequently take personal notes during hearings. These notes are not evidence and are not part of the record of the proceeding. They are generally not considered to be compellable by the courts.

There is no standard method of note-taking and the form used is whatever the panel members believe would enhance their ability to recall, analyse and assess the evidence. The notes serve as a personal aide-mémoire. The personal nature of the notes often means they are useful or comprehensible only to their maker. Use of the notes by someone else can be misleading since they are usually incomplete and idiosyncratic. The notes themselves would therefore be of little use to someone seeking reliable information about a hearing or a decision of a tribunal.

In a practical sense, making adjudicators' notes available to the public could limit the practice of taking notes or impose constraints on note-taking because of fear of second-guessing about how the notes might be viewed. This deprives the tribunal member of a quick personal reference to evidence that would otherwise have to be laboriously



sought in the exhibits or transcript. Where no transcript is kept or available, the likelihood of error is increased when evidence can be forgotten or not remembered accurately. Procedural errors may also occur in long hearings when members cannot easily refresh their memories about earlier testimony or rulings.

If note-taking were constrained because notes were available for disclosure, there would be at least two negative consequences. There could be an increase in the time and effort devoted to decision-making because of inadequate notes for quick reference. This inefficiency will occur at a time when concern is being expressed about delays in adjudication and budgets are being cut. An even more harmful result might be that the decisions will be less thoughtful and more prone to error because the adjudicator is being deprived of the tools needed to do the job. In any event, neither the public nor the general administration of justice would be well served if disclosure were permitted.

Alternatively, making notes available to the public may lead to requests for explanations of idiosyncratic notes and cross-examination of the panel member on their meaning and implications. Does doodling mean the member was not paying attention or does it mean she was carefully assessing the witness's demeanour? Do cursory notes mean the matter was not given weight or does it mean it was evidence that was already familiar to the member? Does the emphasis given a matter at an early point in the hearing when it was first mentioned and noted, reflect the consideration it was given when all the evidence had been received and evaluated? Even the maker of the notes may not be able to answer these questions or decipher the notes after the case is over.

Cross-examination on these points therefore may not be helpful. Even more important, cross-examination would extend and reopen matters that are to be determined by the tribunal and are final, subject to any rights of appeal or review. The benefits of finality and certainty would be undermined by reopening the matter through disclosure and analysis of members' notes.

Our second concern is the question of communications among members. For many tribunals, several members sit on the panels to hear cases and make the decisions. For tribunals that are explicitly required to consider several points of view, for example the tripartite labour boards, the multi-member panel is required by statute. The panel members must discuss the case, evaluate the evidence, consider the reasons and reach a decision in order to fulfil their responsibilities as adjudicators.

In some instances, the communications are completely oral and the question of disclosure of documents does not arise. The discussion and consultation among members, the sharing of expertise and the airing of different points of view, however, is often done in memos, written comments and annotations. This is particularly true when members serve part-time and represent different regions and communities in the province. Delays in decision-making may result when members cannot easily communicate in writing.

Frank discussion among colleagues is necessary to permit a fair and reasoned decision to be reached. The inhibitions that might be imposed by a loss of confidentiality

would affect the quality of the decision-making. Tripartite panels in particular could be deprived of opportunities for compromise and consideration of various points of view. Where a full exchange of ideas and views is not possible or is inhibited, panels may be making decisions that are inconsistent with those of other panels or that do not fully encompass the policy implications of the issue under consideration. Ultimately, the public in general and the public served by tribunals in particular will not benefit by disclosure of communications among members.

The disclosure of communications among the members would also be of only limited practical use, since they would provide only a partial and potentially misleading view of the decision-making process. As with the notes taken during the course of a hearing, the disclosure of these communications could precipitate requests for cross-examination of the adjudicator to determine the meaning and effect of the comments. The collegial decision-making and sharing of expertise would be undermined by a process that would reopen the matter that had been heard and determined by the tribunal.

Our third concern is the question of draft decisions and reasons. The decisions and reasons of tribunals represent the final statements of the tribunal, subject to rights of appeal and review by the courts or other bodies empowered by statute to reconsider the decisions. The reasons are intended to speak for themselves and tribunal members are not required to explain, defend or comment on them.

Draft reasons are often the vehicle through which members exchange views on what the final decision should be. In a draft, the writer may take a particular point of view or espouse a particular result for the tactical purpose of provoking comment and discussion from the other panel members. Indeed, it is possible to have drafts being circulated from two or more members of the same panel so that a range of views can be articulated for discussion. A draft is necessarily incomplete and may even be misleading in light of the eventual decisions reached by the panel.

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The drafting and correcting and redrafting of reasons are an intrinsic part of the decision-making process itself. It is often only through the writing of the reasons that the member or panel reaches the decision. The discipline of writing clarifies the considerations and logic underlying the final decision. The more care that goes into the process, the more likely that a fair and reasoned result will be reached. The reasons themselves are also more likely to adequately explain the rationale for the decision.

Any requirement for disclosure of draft reasons could inhibit the process of careful crafting of well-reasoned decisions. It is only recently that emphasis has been given to the quality and adequacy of reasons and the training of tribunal members in the writing of reasons. Indeed, a primary concern of the Council of Canadian Administrative Tribunals' education program is to help members improve their decision-writing skills. The creation and analysis of draft reasons is an important tool for thoughtful decision-making. Requirements for disclosure of draft reasons can create incentives for not creating drafts and not rethinking and reworking the text. It encourages short, uninformative



and standardized reasons that may not fully explore or explain all the issues. We believe that this would reduce the quality of the results and run counter to the enhancement of administrative justice.

In conclusion, we believe that it is important to remember that tribunals function in an open fashion because of the requirements of natural justice and fairness. In Ontario, many of these requirements are embodied in the Statutory Powers Procedure Act. Tribunals are required to make decisions on the evidence placed before them. Most tribunals conduct public hearings and must give the parties the opportunity to be heard, to present evidence, to call and cross-examine witnesses, and to argue the merits of their cases. Even if a public hearing is not held in a particular matter, tribunals must ensure that the parties know the case they have to meet and have a fair opportunity to present their side. The decisions of tribunals are public and may even be collected and published. Written reasons must be provided on request or are required by statute. A variety of appeal or review mechanisms are available, and the courts oversee the general conduct of tribunals in the carrying out of their legislated responsibilities. The tribunal process is not secret or hidden.

A major reason for the establishment of tribunals is to provide easy access to a specialized or expeditious process. Certainty and finality are necessary for this objective to be met. Second-guessing the final decisions of tribunals and rehearing the matter through an examination of the panel members' intent and speculation about the possible meaning of incomplete and misleading documents detracts from the benefits of the tribunal process. It is important that the independence and integrity of that process be protected. Careful analysis of the evidence, aided by notes taken by panel members and frank discussion and thoughtful consideration, aided by draft reasons and other communications by panel members, will provide the best mechanism for ensuring that tribunals can continue to play their assigned role in the administration of justice in this province.

CCAT would therefore respectfully urge that the members of this committee give favourable consideration to reviving the amendment that was proposed in Bill 169 in 1990 that added a subsection to section 65 of the act, stating:

"This act does not apply to notes prepared by or for a member of a tribunal that is exercising a statutory power of decision if those notes are prepared for that person's personal use in connection with a proceeding in which the tribunal is required by law to hold a hearing."

We would also respectfully submit that the act should be further amended to provide for the exemption from disclosure of communications of tribunal members relating to their exercise of a statutory power of decision and to the drafts of written reasons issued by a tribunal exercising a statutory power of decision.

These amendments would, in our view, be consistent with the essential purposes of the Freedom of Information and Protection of Privacy Act. The major arguments for the adoption of freedom of information legislation that were identified by the Williams commission were: "the need to render government more accountable to the electorate; the desirability of facilitating informed public participation in

the formulation of public policy; the need for fairness in decision-making affecting individuals; and the protection of personal privacy."

It was acknowledged that these might be values that compete in a given case. Establishment of a legislative scheme, however, provided certainty and permitted values to be balanced in a consistent fashion.

We believe that the value of fairness in decision-making is a prime objective of tribunals and that our members are subject to processes and procedures to ensure this objective. These are consistent with the broader objectives of the act. To provide the certainty of the specific exemptions, however, will in this case foster the fairness that the act is intended to achieve. We hope this committee will see fit to recommend these amendments.

We would further like to express our appreciation on behalf of the members of CCAT for the opportunity you have given us today to state our concerns about the disclosure of certain tribunal documents. We would be pleased to answer any questions that you may have about our presentation. Thank you very much, Mr Chairman.

**The Chair:** Thank you. We have time for very brief questions. I believe Mr Frankford is first.

**Mr Frankford:** I guess a lot of note-taking can now be done electronically, like voice recording or electronic notepads, and I presume your members use it on occasions. Do you have any thoughts about how it should fit into this?

**Mr Gosselin:** Madame Priest will answer your question.

**Ms Priest:** When we use the term "documents," we are using it as it is considered in the act, which I understand does cover electronic documents or computer tapes or something like this. Generally speaking, when we are referring to note-taking, it would mostly be during the course of the hearing, although not exclusively. Most of the time it would be the physical writing. You might, I suppose, make a memo to yourself on a tape recorder as you are reading some pre-filed evidence, but when we use the term "document" we would mean that broadly in that sense as well. It may mean some refinements in the drafting to make sure, but I think as long as that is covered as part of the definition of "document" it would be a drafting issue.

**Mr Owens:** I have some sympathy with the recommendations you make with respect to margin notes and draft decisions. However, being on the receiving end of some arbitration decisions, I wondered if I was sitting in the same meeting room. How do I ensure, as a participant in this process, that the person I am presenting to is, in fact, understanding what I am saying? I may think I presented the most cogent argument available on the issue, but then the decision comes down with a complete lack of clarity of the thought process. Yes, the act has been followed in terms of the written reasons for the decision, but the logic seems to escape the decision-making process. How do we ensure that without having to go back and look through the notes to ascertain whether there was an understanding?

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**Ms Priest:** The question of improving the quality of decision-making and improving the quality of writing—there is a whole range of issues. We would assume that



you have presented your case beautifully and clearly. It may be that the member has not been well trained in writing reasons. It may be that he or she has not been appointed taking into account the need to express himself or herself clearly in reasons.

It is an art to write these things clearly. I do not think that access to earlier drafts would be the answer to ensuring that. It may confuse you more. Reasons, in a proper sense, do not just mean a piece of paper. They mean something that sets out the rationale for the decision that has been taken. They show that the evidence has been considered. These are all matters that CCAT is very concerned about. These are other problems that can be dealt with in other ways.

**Mr Owens:** I certainly hold with your suggestions and, as I say, I have sympathy with your suggestion that you send out to your membership some kind of note that we have some concerns about the clarity of decisions and that they need to do whatever they can to help the layperson understand what it is they have set out.

**Ms Priest:** We share those concerns.

**Mr McClelland:** Are there some particular examples or circumstances or situations that have resulted in problems or difficulties for members of various tribunals? Part and parcel of that question is, is there a particular group of quasi-judicial bodies that is experiencing difficulty with requests for the particular items that you set out, the notes, personal notes, internal communication draft? Have you encountered that difficulty and is it more of a preventive thing or are there some difficulties in the present instance that may be useful for members of this committee?

**Ms Priest:** I have not had that difficulty. I do not believe my colleagues have. I have heard stories of such difficulties, of such requests. I could investigate that more carefully and let you know, but essentially it is a preventive thing. We wish to have a statute that sets out a process for access as clearly as possible. But I have heard rumours of problems. If you like, I could ask among my colleagues in the community and let you know.

**Mr McClelland:** I would appreciate that.

**Mr Gosselin:** Just to complete the answer of my colleague, I can tell you that in Quebec we had such a problem three years ago. Two colleagues were called to witness before the Superior Court and they were protected by the Freedom of Information and Protection of Privacy Act. Otherwise, they would have been in a position to talk about all the discussions they had had prior to the decision. It was the protection of the act because there is an exemption in the Quebec law that gives them that kind of protection.

It is very difficult to conceive or to imagine as a board member that all the matters which are on the table prior to the decision is delivered can be put in the hands of the party. It is really a difficult thing to conceive of or imagine.

We usually want to feel free to examine the evidence in the file and to change our minds before the decision is delivered. It is important to have that margin of manoeuvre. It is important to be able to change our minds if we think it is necessary to change our minds and change the decision or the projected decision. If the notes or the pre-decision or the drafts are in a position to be circulated to

the parties, with a testimony or something like that, it would certainly change the way we are working now.

**Mr McClelland:** I understand that in practical terms. I just want to throw this out for your response and see where you go with it. You quite rightly say in your conclusions that the Statutory Powers Procedure Act has certain requirements in terms of fairness in the various documents of law that are embodied therein. How would you respond to an individual who feels he or she is an aggrieved party before a tribunal and then, after the decision, is faced with the sole option of looking, with counsel, at a potential appeal to Divisional Court.

An individual may not be in a position to pursue that remedy in all cases. He says, "I feel strongly that there is a real bias"—we will not get into a discussion of what kind of bias—persists that he knows instinctively there was bias in there, "I know it, I felt it," for a variety of reasons. The only avenue available to him at this point is review to Divisional Court, and it may not be within his means to do that.

How do you respond in terms of a social policy framework that says that individual ought not to have the right at least to examine the information that was part and parcel of a decision that may very seriously affect his or her life? The only remedy open to him at that point is to appeal it to Divisional Court. I would be interested in hearing that because I understand where you are coming from. How do you balance that in terms of the concern I would express hypothetically to you?

**Mr Gosselin:** I am talking about discussions on public evidence in the file. I am not talking about hidden evidence or making a decision on the basis of hidden matters. This is not the same problem. You are talking about the bias that can occur if a particular panel is in contact with some material which is not in the file. That is what you are referring to. There is no problem with that. We are not talking about that. We are talking about discussions between colleagues. We are talking about memos between colleagues, drafts and decisions. You will not see such problems in the matters we are talking about.

**Mr McClelland:** We are limited for time and perhaps this is not the occasion to join in a debate here, but I am not simply limiting it to what you are suggesting with additional or superfluous information that may lead to bias. I am talking about an aggrieved person who feels the frustration with the powerful systems we have in our society. Sometimes an individual stands virtually alone with all the institution's weight and the weight of society generally supporting the institution that is embodied in the tribunal. He or she says they want that assurance and that is the difficulty I have. I guess that is ultimately what we have to wrestle with.

**The Acting Chair (Mr Cooper):** I am sorry, but we are out of time right now.

**Mr McClelland:** You have to let him answer the question if I put the question, Mr Chairman.

**Mr Gosselin:** With your permission?

**The Acting Chair:** Very briefly.



**Ms Priest:** Mr McClelland, part of the problem is that in practical terms I do not think your aggrieved client will necessarily find satisfaction. Let's say the client goes through my notes. They will not find rude comments. I do not do that, but let's say I do not take any notes for half an hour's worth of testimony. Does that mean I was not paying attention?

**Mr McClelland:** Quite the contrary.

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**Ms Priest:** Maybe I was paying very close attention. We have an excellent court reporter. I mean, none of these things can be known by looking through the notes. If they look at an earlier draft—I find that in the process of writing reasons occasionally you can go 180 degrees in order to get the clarity of the thought. If I cannot write, something out there is a problem. It usually means the ideas are not clear, but that would not necessarily give the answer, the problem being that your client in that case will not necessarily—in fact, in most cases, I would suggest—would not find the solution in examining these documents. I will also undertake to try to provide you with that other information.

**Mr McClelland:** It is just a question I put to you for your assistance.

**The Acting Chair:** On behalf of the committee, I would like to thank you for coming today.

#### OFFICE OF THE OMBUDSMAN

**The Acting Chair:** The next presenters will be from the Ombudsman's office. Good afternoon. You will be given half an hour for your presentation. You can use the full half-hour for your presentation, but we would appreciate it if you would make it a little shorter and allow time for questions and comments afterwards. Could you please identify yourself for the record and then proceed?

**Ms Jamieson:** Yes, good afternoon. Bonjour. Sago, in my language. My name is Roberta Jamieson and I am the Ombudsman for Ontario. I appreciate very much the opportunity to appear before you today. There are two separate matters I want to raise for your consideration and they have to do with amendments which might be made to the Freedom of Information and Protection of Privacy Act. Are you referring to it as FIPPA? Is that acceptable? Fine, because I will be using it a number of times in the presentation.

My first interest has to do with the repeal of a section that used to be clause 42(m) of the act. That was repealed on January 1, 1991.

First of all, before I speak to that, let me refer you to a section in my act, subsection 20(1), which really requires any member of a government organization to furnish any information to the Ombudsman, and to produce any document or things which in the Ombudsman's opinion relate to any matter under investigation.

Now, that seems very clear. However, in case some people might interpret that to be in conflict with the provisions of FIPPA, section 42, which deals with exceptions or with cases where disclosure of personal information is permitted, listed the Ombudsman as an exception in clause 42(m). Similar exceptions were also made for the offices of the Auditor General, the archives of Ontario and Statistics Canada so that personal information could be made available.

While you might think that subsection 20(1), the section I read at the outset, is sufficient direction to an official that information must be disclosed to the Ombudsman in the course of her investigation, I welcomed 42(m) because it helped me assist public servants to understand my role. From time to time when we get a complaint my staff might contact a public servant so that a matter brought to me could be resolved early on—often it is done by telephone—only to find that the official is uncertain whether he has the authority to release information to me. In clause 42(m), listing me as an exception helped to relieve any lingering doubts.

However, clause 42(m) has been repealed and now the question is raised in the minds of some officials whether it is now the Legislative Assembly's intent that personal information not be made available to the Ombudsman. I cannot believe this is the case since it would make it untenable for an Ombudsman to perform her legislative mandate. It is hardly likely that the assembly would have intended to have the Ombudsman appeal to the Information and Privacy Commissioner in order to obtain information which the Ombudsman already has the statutory power to obtain. However, the possibility of an unfortunate confrontation exists so long as there is room for the head of a government organization to believe he or she has the authority to refuse information the Ombudsman has deemed necessary to conduct an investigation.

I am not even certain whether the Ombudsman would be considered to be a person within the meaning of the act so that I can seek an appeal. Even if I were, it would be inordinately cumbersome if I were obliged to go through an appeal to get information I have been receiving since the office was first created 16 years ago. None the less, I am finding doubts are beginning to rise again. There have been a few challenges citing the removal of clause 42(m) as justification. I have prevailed in each of these discussions, but there have been delays and unnecessary confusion. I can see no public interest which is served by its removal, and I can see the avoidance of confusion as sufficient reason to leave it in.

Therefore I ask the committee to consider recommending to the assembly that there be a provision in the act which makes it clear that personal information required by the Ombudsman is exempted from the prohibition against disclosure set out in the act. That could be done in a couple of ways. You could reinstate 42(m), or through a discrete or separate section you could explicitly set out that no part of the act shall be interpreted as limiting the powers of the Ombudsman as set out in the Ombudsman Act. That is one.

I mentioned there were two matters I wanted to place before you.

**Mr H. O'Neil:** Do you want to deal with that first, Mr Chairman, or should we—

**Ms Jamieson:** As you wish. The second one does—

**The Chair:** Does it tie in?

**Ms Jamieson:** Yes, in some ways.

**The Chair:** Okay.

**Ms Jamieson:** The second relates to the ability of the Ombudsman to maintain confidentiality with respect to



information I have received under provisions of the act, including information I got through an investigation. As you know, the people of Ontario are able to come to me with complaints and issues about acts or omissions by the public administration, including public servants, over 80,000 of them, and interestingly enough including all administrative tribunals, agencies, boards and commissions. They come to me with their complaints and issues with the assurance that the matter will be dealt with confidentially.

Without this assurance I fear many members of the public will not come forward with their complaints and government agencies will resist disclosing information to the Ombudsman. So that this assurance can be given, the protection provided in the Ombudsman Act is very broad. The confidentiality provisions in fact are a vital hallmark of my work. In fact, there are prohibitions in the Ombudsman Act which prevent me or my staff from disclosing information we have received in our official capacities. That is set out in a number of sections of the act and indeed in regulations accompanying the act.

Section 13 of the act, for example, limits the information I can disclose to only that in which my opinion ought to be disclosed to establish my recommendations and findings. The requirement to maintain confidentiality is so complete in my act that under one section, 25a, neither I nor my staff can be called to give evidence in a court hearing with respect to information that has come to my knowledge in the course of investigation. That kind of privileged relationship is, I believe, essential if the Office of the Ombudsman is to have the highest possible credibility with the people of the province.

Confidentiality is particularly important because the Ombudsman has also been given extremely broad powers of investigation, including the ability to summon and examine on oath, and also a broad mandate. With this in mind, and given the understandable need to foster candour on the part of persons involved in Ombudsman investigations, it is not surprising that the Legislature has emphasized confidentiality as essential and in the public interest in the discharge of my duties.

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Yet, probably inadvertently—I am certain it is inadvertently—the Legislature has created a situation in which information that I cannot be forced to release even by court order can now be released through FIPPA. The information which I receive is usually personal information, of course, because the act provides that I do not have jurisdiction to investigate a complaint unless the person bringing it to me is personally affected by the action he or she is complaining about.

Recently, the Information and Privacy Commissioner was asked to determine whether a ministry should be required to disclose a document in its files which it had received from one of my predecessors, a document which he had relied upon in arriving at tentative findings. The document had been provided by my predecessor to give the ministry an opportunity to provide its comments. That is part of the usual process: We begin the investigation; we hear from the ministry involved and its views of the complaint being put forward; we do our homework, and I formulate a tentative report. If it is a report that supports the

complaint, I provide it to the ministry and ask for their views. Do they have more information? Have I misunderstood something? Has something been missed? It is a document that is provided in the course of investigation, in the process of my doing my work, but it is a tentative report only.

Because the document that was provided at that time contained some very sensitive information, the Ombudsman expressly reminded the ministry by letter that the documents we provided to it had to be kept confidential. Nine years later, disclosure was sought by a person who was not a party to the original complaint nor a person who had supplied information to the Ombudsman in the course of the investigation. The commissioner released his decision in September ordering the ministry to disclose to the appellant certain portions of the Ombudsman's documents.

I am seeking judicial review of this decision. The principle of privacy which is upheld by Ombudsmen all over the world and the power given to me in the Ombudsman Act to determine what information ought to be released compelled me to do so.

I have every respect for the commission and the FIPPA commissioner's discharge of its mandate. I am concerned, however, with the overriding public policy questions this particular case raises. If the release of the documents were to stand, those who provide me with information could no longer be assured that the information is confidential.

Until this matter is resolved, I find myself in a very difficult situation. On the one hand, I am obliged to ensure that information provided to me is kept confidential. On the other hand, I am obliged by subsection 19(3) of my act to provide government organizations with certain information solely for the purpose of engendering an appropriate response by them to my tentative findings. That information can now be the subject of an order of disclosure to a person who is not a party to the investigation.

I am sure you will agree that it is most unfortunate that an officer of the Legislature should be placed in this kind of dilemma. I have, as a result, been obliged to cease providing my tentative findings in writing. Instead, meetings are held with appropriate staff in which the tentative findings—that is, my report that I referred to earlier that I give to the government organization which says: "This case has been brought to me. It appears as though I may support this complaint. This is what it looks like. These are my conclusions. These are my recommendations. Is there anything more you would like to say to me about this information? Are you prepared to offer and accept the recommendations now and settle this matter?"—it is really a document in process. Now we have to present it verbally so the organization has the opportunity to comment. Those presentations, of necessity, are now lengthy. The material is often voluminous, complex and technical.

I am conscious that this necessary procedure does not give the governmental organization involved an opportunity to give careful review of my tentative findings, conclusions and recommendations. This procedure also causes delays and frustration for members of the public. Obviously it is my hope that this dilemma is soon resolved so that I can resume the normal, fair process.



I mentioned earlier that I thought the current situation was inadvertent. I cannot find anything in my examination of the legislative record which indicates that the special mandate of the Ombudsman was considered in the most recent amendments to the legislation. I note that in 1979 when the Williams commission considered this problem generically, it made a list of all the statutes which contained confidentiality provisions. It then set out the criteria which a confidentiality provision must meet if it is to be exempted from FIPPA.

FIPPA did include such legislation as the Commodity Futures Act and so on in section 67. These provide for extraordinary powers of investigation similar to those of the Ombudsman Act. Somehow, however, although the Ombudsman Act was on the original list and although it fits the criteria, it was not included in the final list, and there appears to be no explanation for the omission. Surely it is obvious that the Ombudsman must have at least the same exemptions from FIPPA that have been extended, for example, to the Ontario Securities Commission.

The mandates which the Legislature has given both the Information and Privacy Commissioner and the Ombudsman are designed to increase public confidence in government accountability. In fact, in some provinces the Ombudsman's mandate also includes responsibilities similar to those of an information commissioner. If the two mandates are not to conflict at the cost of decreased public confidence, it appears necessary that the Legislature confirm that the Ombudsman Act and FIPPA are intended to work co-operatively.

The Legislature has already provided in subsection 50(4) of FIPPA that the decisions of the commissioner are not subject to review under the Ombudsman Act. It seems to me that what is needed now is for FIPPA to include provisions which will allow the Ombudsman to continue to uphold the high standards of confidentiality with respect to documents addressed to her by members of the public and by governmental organizations. The essential strength of the Ombudsman is the assurance that she is neutral and independent. The Ombudsman must be able to ensure that communications with her by all parties, public and government alike, will be held in the strictest of confidence.

Surely it cannot be the intent of the Legislature that the Ombudsman be obliged, quite properly, to withhold confidential information from a disinterested member of the public and then to permit that same person to obtain that very information through FIPPA.

I would be very pleased to offer the committee any collaboration I can to assist in providing the Ombudsman of Ontario with the ability to maintain confidentiality, so that I can continue to perform the mandate the Legislature has given me in a fair and equitable manner.

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**Mr Owens:** My question is regarding your initial comments. I am curious to know—if you know, actually—why clause 42(m) was repealed.

**Ms Jamieson:** In fact, I do not know. I was not consulted and did not find out until several months after it had been repealed that in fact this had occurred.

**Mr Owens:** Mr Chair, we have Mr Frank White with us. I am wondering if Mr White could address that question.

**Mr White:** If you take a look at clause 42(e) of the provincial Freedom of Information and Protection of Privacy Act, it says, "An institution shall not disclose personal information in its custody or under its control except...for the purpose of complying with an act of the Legislature."

There were four acts listed under the subsection that required the production of personal information, and the Ombudsman has mentioned that one of those was hers. At that time the government felt it was redundant, because that section covered the Ombudsman, the Provincial Auditor, Statistics Canada and quite a few other statutes of the Legislature.

**Mr H. O'Neil:** So are you saying there is really no problem there, then, that in any case which the Ombudsman brings up, whatever, she is covered?

**Mr White:** Yes, by the disclosure of personal information where another statute requires it, that allows it in this clause, 42(e). There must be about 100 other statutes—it is not just these four that we are dealing with—that require the disclosure of personal information. One could probably be the Occupational Health and Safety Act. Many ministries have acts that require the disclosure of personal information, and this clause 42(e) would allow that. If you take a look, it also includes an act of Parliament, so that is why the Statistics Canada reference was removed.

**Ms Jamieson:** If I could just speak to that in response, I am aware of clause 42(e). I am also aware that section 42 begins with the word "may." There is a discretion, and although clause 42(e) is in fact what we do use, what we do cite, having clause 42(m) there made it abundantly clear and avoided a lot of the difficulty we are encountering now.

That is why I said in the presentation that, while we have prevailed, the repeal of clause 42(m) has forced people to ask themselves why clause 42(m) was repealed if it did not signal something about provision of information to the Ombudsman's office. So while I agree with the position put forward on the interpretation of clause 42(e)—we do point to it, we do utilize it in our discussions with officials—nevertheless, the lack of clarity caused by the repeal of clause 42(m) is causing me great difficulty.

**The Chair:** Mr White, did you want a further point of clarification?

**Mr White:** I guess we are having a difference of interpretation. It says, "An institution shall not disclose personal information in its custody...except" where another statute requires it. Our advice, all the publications that are issued interpreting the act, would in fact—I think a few of them might even cite the Ombudsman Act as one where this section would apply.

So really it is, I guess, a difference in interpretation right now. We certainly would say that the Ombudsman Act applies with clause 42(e), if anyone asks, if it is a question of whether it is clear or not. I do not have anything else to add.

**The Chair:** Any further questions? Mr O'Neil.



**Mr H. O'Neil:** You are saying you have had a lot of problems. How many specific problems would you have had with this particular section?

**Ms Jamieson:** In the last week about three.

**Mr H. O'Neil:** When you were not sure of the interpretation of it, did you call the freedom of information people and get clarification?

**Ms Jamieson:** I am sure of the interpretation of it.

**Mr H. O'Neil:** But in other words, how did you handle the three problems when you had a doubt about them?

**Ms Jamieson:** It takes time to explain, to convince, to convey, to persuade officials that they ought to comply with the Ombudsman Act, they ought not to take a signal out of the repeal of clause 42(m) and they ought to provide us with the information. That is why, when I spoke in my presentation about the fact that we have prevailed, I said it takes an incredible amount of time. I am not certain why it was repealed.

**Mr H. O'Neil:** Maybe we should ask again why it was repealed. You had better stay up an extra night.

**Mr White:** It was felt that those sections were redundant because in fact they were repeating what clause 42(e) said about another statute requiring disclosure. It listed a few that required disclosure but it did not list all the statutes that required disclosure.

**Mr H. O'Neil:** So you are saying that you do not feel there is a problem with section 42 or the other disclosure matters you mentioned.

**Mr White:** In interpretation, from my point of view, in terms of communication there may well be. We might be able to work something out in terms of sending something to ministries to inform them of this interpretation, to make it clear that this would apply. I cannot discuss the experiences of the Ombudsman. If she has had problems with the act, then I will listen to her experiences.

**Ms Jamieson:** The other thing is that I have 31,000 people a year coming to me. If I have to spend a lot of time straightening out questions like this, a lot of people will be waiting for service. That troubles me. I wonder if I could take one minute—

**The Chair:** Mr Owens has a question.

**Ms Jamieson:** I am sorry.

**Mr Owens:** Perhaps you were going to answer my question, but I was wondering, how much time is added? You have had three cases this week. Presumably you could have resolved them this week. Are they still ongoing as a result of the difficulties you have had?

**Ms Jamieson:** Yes, they are not sorted out yet. Often these are line managers; these are not always senior officials. They will look it up in their book and they will be confused. They are more confused now because of the recent ruling, which I referred to in my second point, that has been made by FIPPA about the disclosure of information.

That is not exactly the point I was going to speak to. I wonder if the Chair would permit me to raise a matter. As I came in, you were chatting with members of administrative tribunals. I heard the member here who raised this last

question. raise a question of information, and also a member on this side as well. If I could just clarify for the members, if any member of the public is dissatisfied or concerned about an action, an omission, a decision, etc, made by any administrative tribunal in the province, the Ombudsman has the jurisdiction to review those complaints. I just wanted to clarify that matter, because it was referred to earlier that the only recourse available was to go to court and seek judicial review. In fact, I do have such a mandate.

**The Chair:** Thank you. One quick question, Mr Owens.

**Mr Owens:** We heard testimony last week from two community legal clinics that were involved in a situation where counties had requested the names of recipients of social assistance in their counties. The privacy commission ruled in favour of the county, indicating that these names were going to be used in the conduct of their duty. I think 42(d) is the exact clause that was quoted. Is that an appropriate case for you to look at? Should we recommend to the folks who may be involved that instead of going through the court procedures, they should in fact come to you to look to have that ruling overturned?

1650

**Ms Jamieson:** If they are dissatisfied with the ruling made by the commissioner under FIPPA?

**Mr Owens:** That is right.

**Ms Jamieson:** No, there is a specific subsection—I think it is 50(4)—in this act which provides the fact that I cannot review the decisions of FIPPA. That is the irony I referred to at the end of my presentation. While we have spent some time ensuring that there is balance in terms of the discharge of FIPPA's mandate and my review, we have not spent the time ensuring that I can do my job without the review of FIPPA interfering with the discharge of my responsibilities.

That is why the second point, which I cannot emphasize strongly enough, really makes the discharge of my mandate untenable. If I cannot provide governmental organizations with a tentative report so that they can respond, hopefully accept the recommendations or comment on them, it is extremely difficult for me to do my job. That is why I really cannot be strong enough in requesting that the committee turn its mind to this matter. Again I volunteer that if I can be of any assistance in chatting about the drafting and so on of acceptable amendments, I will be happy to do that.

**The Chair:** Thank you very much for coming along here this afternoon and making your presentation. As with all presentations, the committee will take your arguments and weigh them very carefully when we begin to do our deliberations on amendments to this particular act in the coming weeks.

**Mr McClelland:** While our next group of visitors is getting ready, I wonder if I could just touch on a matter of order. I note that it is almost 5 o'clock and there are three groups. My understanding is that the House leaders have agreed to a vote and there will be a division at 5:45. It concerns me that if we maintain the schedule, the witnesses who



have come here to appear at 5:30 will not be called until 6. I wonder if you might address the logistical problems. I do not know how we are going to handle that, but I would hate for people to be waiting and then feel they are not welcome. I am concerned about the three people from the Ontario Cancer Treatment and Research Foundation.

**The Chair:** Like you, I am concerned that we hear all witnesses who come forward today. If there is a vote at 5:45, maybe we would adjourn for a recess until the vote is over and then resume immediately after the vote and continue with the hearing.

**Mr McClelland:** We are prepared for that.

PROVINCIAL FEDERATION  
OF ONTARIO FIRE FIGHTERS

**The Chair:** The next presenter is from the Provincial Federation of Ontario Fire Fighters. Please state your names and the positions you hold in your organization. You have up to one half-hour to make your presentation, but it would be nice to leave some time for some questions.

**Mr Kostiuk:** My name is Andy Kostiuk. I am the chairman of the Provincial Federation of Ontario Fire Fighters safety committee. Garth Dix is a regional director for the same organization.

The Provincial Federation of Ontario Fire Fighters wishes to thank the standing committee on the Legislative Assembly for the opportunity to make this presentation. We solicit the support of this committee in changing pertinent sections of the Freedom of Information and Protection of Privacy Act, 1987, so that firefighters will have the right to obtain medical information to the extent that a disclosure is necessary to determine if emergency health care workers have been exposed to a communicable disease for the purposes of testing, treatment and counselling, if needed.

We hope to prove to this committee that we have a need and a right to be able to determine whether or not we have been exposed to a communicable disease during the performance of our duties. As well, we will show that what we request is being readily accepted in the United States.

We have read the Freedom of Information and Protection of Privacy Act, 1987, and find it to be a confusing document. I might add that if even the Office of the Ombudsman finds it confusing, obviously it is confusing to us; we are just firefighters. It professes to allow individuals more opportunity to obtain personal files that institutions or governments may hold, yet provides the means for institutions to prevent access to information that is required for the protection of emergency health care workers.

We are not alone in our confusion, as can be seen from the attached letter in appendix A. I will not trouble you by reading it, but it is from the chief medical officer of health, Dr R. Schabas. It cites the Freedom of Information and Protection of Privacy Act as the reason that firefighters are unable to obtain confirmation or denial of exposure to communicable diseases.

We recommend the following changes to sections 21 and 42. We do not pretend to be lawyers or legislative experts and therefore make these suggestions in the context of what we think will provide our members with the protection we seek. If it can be reworded or we have

missed other pertinent sections that require change, we would accept the help of this committee in making the necessary changes.

Under subsection 21(3), it reads, "A disclosure of personal information is presumed to constitute an unjustified invasion of personal privacy where the personal information, (a) relates to a medical, psychiatric or psychological history, diagnosis, condition, treatment or evaluation."

We would like to add to that, "except to the extent that disclosure is necessary to determine if firefighters, police or ambulance attendants have been exposed to a communicable disease for the purposes of testing, treatment and/or counselling."

Section 42 reads, "An institution shall not disclose personal information in its custody or under its control except..."

We would like to add, "(f) disclosure of information through the medical officer of health to a firefighter, police or ambulance attendant of exposure to a communicable disease occurring while performing rescue or providing emergency medical care."

These recommendations are supported by members of the Public Safety Services Liaison Committee, which is made up of representatives from the following organizations, including ourselves: Ministry of Health, emergency health services; Ministry of the Solicitor General, the fire marshal's office; Ontario Professional Fire Fighters Association; Ministry of the Solicitor General, policing services division; Ontario Association of Chiefs of Police; Ontario Association of Fire Chiefs; Provincial Federation of Ontario Fire Fighters; the Police Association of Ontario; Ministry of Labour, industrial health and safety branch; OFL/Ontario Public Service Employees Union, which represents ambulance attendants; Ministry of Health, public health branch, and Municipal Fire Department Instructors' Association.

We understand that the Information and Privacy Commissioner will not make policy decisions regarding the freedom of information act until it is tested in court. Unfortunately, we cannot afford to jeopardize one of our members by waiting to test this act in court.

We also understand we may still have a problem with section 38 of the Health Protection and Promotion Act, but that remains a battle for another day. The opportunity exists today to clear up the Freedom of Information and Protection of Privacy Act. We submit that firefighters are having problems with the current act, given any of the following three possible scenarios.

Example A is a car accident victim who receives emergency medical care on the street by firefighters who must extricate the victim from the torn and twisted metal of a car. In the course of the extrication, a firefighter cuts himself and is exposed to the patient's body fluids. He and his department try to determine whether he has been exposed to a communicable disease or not but are blocked by a cloak of secrecy from hospital personnel.

The victim is taken to hospital and determined to have a communicable disease, by the attending physician, who must report this matter to the medical officer of health as required by the Health Protection and Promotion Act, sections 25 and 26. Presently, the attending firefighters would



not be contacted by the medical officer of health because this would be considered a breach of the Freedom of Information and Protection of Privacy Act, clause 21(3)(a).

If we change the example to an HIV patient, the medical officer of health would seek out persons having intimate contact with the patient and advise treatment, counselling and testing. The firefighters would not normally be contacted. In this same scenario, the ambulance attendants would be prevented from contacting the firefighters directly if they found at the hospital that a contagious disease was involved because, again, it is a breach of the Freedom of Information and Protection of Privacy Act. We have an example of that in appendix B, which is a letter from the union representing the ambulance attendants.

1700

Example B: Firefighters respond to a 911 tiered response to a child suffering convulsions. Because of the need for immediate action, universal precautions are not used. The patient is taken to hospital and diagnosed as having infectious meningitis. Again, firefighters may not be contacted because technically it is a breach of the Freedom of Information and Protection of Privacy Act to do so.

Example C: Firefighters, police and ambulance personnel respond to an accident where one of the emergency services learns that the patient has HIV. They are technically prevented from passing that information to the other services unless the patient's care requires that information be exchanged. In most accident cases the communicable disease is the secondary problem for the victim yet the primary health concern for emergency workers.

I have been directed by the membership of the PFOFF at the annual conventions in June 1990 and June 1991 "to establish a communications procedure between emergency medical service personnel to ensure that all firefighters are made aware of any infectious disease they may be exposed to and seek the Ontario fire chief's assistance in this endeavour."

The Ontario fire chiefs do support our position and have acknowledged it in writing, which is appendix C. They have also made a presentation to this committee. Unfortunately, the Freedom of Information and Protection of Privacy Act, 1987 and the Health Protection and Promotion Act, 1983 are alternately presented as obstacles, depending on the government agency we approach. When we began this endeavour in December 1990, I expected that this was a simple matter of informing the government of an oversight and having the matter corrected.

In searching for the person or committee that could effect change, we have contacted the Minister of Health, participated in meetings with Ministry of Health staff, participated in meetings with the public safety services liaison committee, written the Information and Privacy Commissioner, and have written Premier Bob Rae directly. We are awaiting his reply. Our letter to him is contained in appendix D. We have also written to Paul Gardner, the director of corporate policy division, Ministry of Health, to protest proposed changes in HIV testing protocols that would allow anonymous testing. Our letter is contained in appendix E.

We have met concerned individuals in all government agencies who are sympathetic to our cause, but none yet with the authority to make the required changes, although we

believe that, through the public safety services liaison committee and the support we have received from the emergency health care division of the Ministry of Health, changes in the Health Protection and Promotion Act are possible.

The Provincial Federation of Ontario Fire Fighters supports the concept of universal precautions in regard to communicable disease, and we promote this within our membership. However, as firefighters, we respond to situations that at times render universal precautions ineffective. An example is auto extrications where sharp metal may tear latex medical gloves.

I have attended an auto accident during a medical response where the victim was drowning in her own blood. I had the choice to take the time to don medical gloves that were underneath my bunker gear used for firefighting or take action to save the patient's life. Needless to say, I was exposed to a considerable amount of blood. This is not an unusual circumstance, and we respond to situations where decisions are made in a matter of seconds that affect people's lives. Sometimes, for the sake of others, we do not have the chance to exercise universal precautions.

As well, it is the nature of our work that we are involved with a great deal of physical activity. The result is that most of our members will have some form of hand cut, either fresh or healing. We therefore have a concern for possible or direct contact to HIV-contaminated blood.

Studies by the National Fire Protection Association in the United States has led it to develop standard 1999 for protective clothing for emergency medical operations because existing latex gloves, for example, were originally designed to protect the patient from the health care worker and are not strong enough to protect the emergency health care worker from the patient. No gloves are currently manufactured to this standard, but they likely will be in the near future. This is good news but will not totally eliminate the possibility of communicable disease exposure.

We recognize that the number of HIV patients in Ontario limits our professional chances of exposure and we are not paranoid regarding this risk. We are aware of the Ministry of Health's statistics which we have attached as appendix F. We note, however, that two firefighters have contracted AIDS in the United States after exposure to HIV-positive patients during rescues: one in Florida and one in Oregon. As well, the World Health Organization predicts 40 million people will be infected with the HIV virus by the year 2000. This comment was made at the seventh international conference on AIDS held in Florence, Italy, June 16, 1991.

The calm reflections of professional detachment are possible until one has a concern that he or she might have been exposed to a HIV-positive patient because there are doubts that the present system affords the firefighter any reliable protection from infectious disease. We simply want the right to know if we have been exposed. The right to know helps timely treatment, prevents further transmission and would ease our members' concerns for possible transmission of communicable disease to their families. As further proof that our concerns are legitimate, I submit three American examples of laws that support in practice what we have been trying to accomplish since December 1990.



Example 1 is from the state of Rhode Island, and is an amendment to their Health and Safety Act:

"The General Assembly finds and declares that by reason of their employment firefighters and emergency health technicians are required to work in the midst of and are subject to exposure to infectious disease; that after such exposure, firefighters and emergency technicians are not informed of such exposures; that firefighters and emergency medical technicians so exposed can potentially and unwittingly expose co-workers, families and members of the public to infectious disease. The General Assembly further finds and declares that all the aforementioned conditions exist and rise out of the course of such employment."

The next section is strictly definitions and I will skip that.

Notification of infectious disease: Under section (a) "If while treating or transporting an ill or injured patient to a licensed facility, a firefighter or emergency medical technician comes in contact with a patient who is subsequently diagnosed as having an infectious disease, the licensed facility receiving the patient shall notify the employee of the individual's exposure to the patient.

"(b) Such notification shall be made within 48 hours or sooner, of confirmation of the patient's diagnosis.

"(c) Such notified employee shall contact the licensed health care facility to determine the infectious disease to which he/she has been exposed to receive appropriate medical direction for dealing with the infectious disease.

"(d) Notification made pursuant to this section shall be conducted in a manner which will protect the confidentiality of the patient, and firefighter and emergency technician."

I will skip to a summary of example 2, which is that the American federal government has recently passed the Ryan White Comprehensive Aids Resources Emergency Act of 1990. The purpose of this law is to enable emergency response workers to learn that they have been exposed to an infectious disease while providing emergency medical care. Emergency workers need this information in order to get early intervention medical treatment, and to take precautions necessary to prevent further transmission of the disease.

Covered diseases: They are still working on the list of infectious diseases to be covered, and the method by which they deal with it is that the public health officer for each state, usually the Secretary of Health, must name a designated officer for each employer of emergency response workers to serve as an intermediary for all notifications under the law. The designated officer must be someone who is an employee or officer of the individual fire department or other emergency response agency, and should be someone trained in the provision of health care or in the control of infectious disease.

Routine notification: Hospitals will be required to notify the designated officer of transporters of any emergency patient who is found to have an airborne, transmissible through air, infectious disease.

Notification by request: Firefighters who believe they could have been exposed to infectious disease, either airborne or blood-borne, must report the incident to their designated officer with as much detail as possible. If the designated officer feels an exposure could have occurred,

he or she will contact the hospital where the patient was taken and supply all the details of the incident. If the hospital agrees that exposure was possible, the hospital informs the designated officer as soon as possible, but not later than 48 hours after receiving the request if the patient in question is known to have an infectious disease that could have been transmitted during the specific incident.

The hospital retains the right to disagree with the designated officer that an exposure could have occurred. If the hospital states that there is insufficient information, the designated officer must either try to obtain additional information or appeal the hospital's decision to the local health officer, who may overrule the hospital."

Confidentiality: All medical information related under this provision must be kept strictly confidential.

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I will skip to the Florida example which should be listed as example 3. The Florida law allows testing of patients for HIV, and as reported in the National Fire Protection Association Journal, January/February 1991, Florida Governor Bob Martinez recently signed a bill into law that allows medical personnel who have been exposed to a patient's blood to request the patient be tested for HIV antibodies. The bill had received unanimous support in the Florida Legislature. For testing to take place, medical personnel would have to have been significantly exposed to a patient's blood. If the patient refused to be tested, a test for HIV could be conducted on blood samples taken earlier. If the patient refused to be tested and no blood samples were available, blood would not be drawn unless circumstances constituted a medical emergency.

In conclusion, you can see other governments have dealt with the emergency worker concerns without jeopardizing individual rights to privacy. All we ask is the same consideration by our government.

**The Chair:** Thank you very much for your presentation. Questions? Mr McClelland.

**Mr McClelland:** I was going to say it is pretty straightforward and I do not have anything to add, other than to say thanks. It is laid out well and I appreciate the resource material you have appended to it. It is useful stuff. Thanks.

**Mr Owens:** Would you be able to provide to the committee the documentation behind the two case studies you have mentioned?

**Mr Kostiuk:** Yes, we could.

**Mr Owens:** I would appreciate that. My second question is, what happens with the patient if a firefighter or an emergency medical person is HIV positive himself or herself and is involved with a patient? Is it your expectation also that the patient should then be informed that the firefighter or the ambulance personnel who they dealt with was HIV positive?

**Mr Kostiuk:** That would be a reasonable position in our opinion.

**Mr Owens:** In terms of how the Health Protection and Promotion Act works, and I do not have a great familiarity with the act, if a patient comes into the hospital with one



of the "reportable diseases," is it not the duty of the doctor to trace the contacts, especially if they have come in through the emergency services?

**Mr Kostiuk:** Actually, under the present law, under the Health Protection and Promotion Act, the doctor is required to report that to the medical officer of health for the jurisdiction he is in. If the person lives in another jurisdiction, that medical officer of health passes it to the jurisdiction that is involved. But the medical officer of health then is required, for certain diseases or if he feels there is a real hazard, to track down that person's activities.

In case of AIDS or HIV, the medical officer of health would trace all the people that person has had intimate contact with, but if the person had arrived by ambulance and had been treated at an emergency scene by firefighters, police and ambulance, there is no requirement at the present time for that medical officer of health to go back and trace all those emergency care workers who would have been exposed as well.

In the course of a fire department's investigation—and so far there have been a lot of people who probably put their jobs on the line, because we have had co-operation from the coroner's department, from doctors and ambulance personnel who are all technically in violation of the Freedom of Information and Protection of Privacy Act. If a fire department works hard enough at it, makes enough phone calls, contacts the right people, usually somebody will break down and give us the information. But in reality they should not. We accept their help and appreciate it, but they are technically in violation of the Freedom of Information and Protection of Privacy Act. There is no requirement right now under the Health Protection and Promotion Act for them to come back and contact us, and in most cases they will not unless we go after them.

**Mr Frankford:** Just for clarification, you are not just talking about HIV.

**Mr Kostiuk:** No, that one always gets the most attention because there is no cure, but there are a host of other ones, including tuberculosis, infectious meningitis, hepatitis B—all those are a lot more contagious than HIV is, by the way.

**Mr Frankford:** Historically, do you have any knowledge of the situation with tuberculosis and would that situation, whatever it was, have been changed dramatically by the Freedom of Information and Protection of Privacy Act?

**Mr Kostiuk:** Actually, up to this point, from my own example—and it varies across the province, obviously—in Metropolitan Toronto, because of our close relationship with the department and ambulance services, it probably has not had a dramatic effect because they have carried on with their co-operation. That is not to say the same thing is happening throughout the province, because there are smaller communities where the firefighters are not getting that information, they are just drawing a blank when they go to the well for information. People are saying, "We can't give it you." The privacy act is the reason they cannot. In Metro, it has not been a big problem yet.

**Mr Owens:** I am just wondering if this is even the correct act to be dealing with this request. I am wondering if it would not be better captured under the health promotions

and protections legislation. I understand this act is open for review, but in terms of its proper placement in order to provide effectiveness, do you think it might not be better placed under the Health Protection and Promotion Act?

**Mr Kostiuk:** The reason we would like it clarified here, where this act is now open and health promotions is not, is that they are alternately used as reasons for not getting it. We are having ongoing discussions with the Ministry of Health and we have some allies in that organization in many places who are working with us to maybe make a policy change in the Ministry of Health to allow us to get that information. So I think we can make changes there. It is just so that now, when we get changes there, they do not come back and say, "The freedom of information act prevents it." It is a question of which comes first.

**Mr Owens:** Just one more quick question. Your organization spoke to us last week and brought similar concerns. I raised the question with respect to what the firefighters' association is doing to ensure that the firefighters receive the proper counselling and family support, because of the kind of devastation of that news, whether or not the person is infected. I think you mentioned that yourself in your presentation, just the simple fact, "I have been involved with a person with HIV," whether it is real or not. What kinds of things are you doing to ensure that the firefighter, the emergency worker, receives the proper counselling?

**Mr Kostiuk:** The answer to the question is that the fire marshal's office of Ontario set up the critical incidence stress debriefing team. Some big departments have their own employee assistance programs and in those you have stress debriefing. The smaller departments that do not can now contact the fire marshal's office. They send out debriefers or put you on to medical authorities so that kind of counselling can take place.

**Mr Owens:** Immediately?

**Mr Kostiuk:** Within a day's time, sort of thing, within a phone call. It takes some time for them to arrive—no more than a day or two.

**The Chair:** I was wondering if Mr White would like to clarify the point raised by Mr Owens as to whether this is the appropriate place to address the questions raised by the Provincial Federation of Ontario Fire Fighters.

**Mr White:** Actually, I think it was a very good comment. One thing, for instance, the provincial Freedom of Information and Protection of Privacy Act and the municipal act do not apply to hospitals, they do not apply to doctors' offices. So there are only certain organizations, for instance the chief medical officer of health, that would apply to the Ministry of Health. If you are looking for some wider direction to health care workers, I think you would have to go to the Health Protection and Promotion Act.

We could also look at section 42e again that we were discussing with the Ombudsman, where another act allows the disclosure of personal information. It is authorized under the FOI act, but that is what you get in a general purpose act, because there are, I would guess, about 50 to 75 statutes that authorize the disclosure of personal information. Rather than listing all those in a provincial act—



and a similar situation is probably in the municipal freedom of information act—the easiest way is to go to the separate statutes and allow the disclosure through the separate statutes.

**Mr Owens:** Am I to take it then that these folks are currently in a position to have that information disclosed to them? Is that my understanding of what you are telling me?

**Mr White:** I am sorry. Could you repeat that question?

**Mr Owens:** Is it my understanding from what you are telling me that these folks are currently in a position to receive that information?

**Mr White:** I do not know what the Health Protection and Promotion Act requires. I think you would look there for your authority to disclose communicable disease information right now.

**Mr Kostiuk:** We agree with his position. That has been told to us before. Unfortunately, right now there is no act that gives us the authority to request that. It would require us going through a private member's bill or something, which would be quite time-consuming.

**The Chair:** Thank you for coming along and making your presentation this afternoon. We will certainly take your comments into consideration when we get around to debating proposed amendments to this bill.

1720

#### SOCIAL POLICY GROUP

**Mr Latchford:** My name is Vance Latchford, and I am the principal of the Social Policy Group. While not wanting to draw attention to myself in particular, I would advise the committee at this time that by reason of disability I am not able to read my notes and am therefore forced to speak to you off the top of my head. So the comments I am about to make to you will not necessarily be included in the notes, although I am hopeful I can remember enough to touch upon what my notes do say.

I want to start off by saying it is due to Mr Owens's interest that I am here today. He had expressed a particular interest in hearing representations from myself and others from, I guess, my level within society with respect to the impact of fees and the fees provision under the Freedom of Information and Protection of Privacy Act, 1987. While I have comments with respect to fees, there are some other things I want to address as well.

Along the same lines, I want to take this opportunity to thank the staff of the Information and Privacy Commissioner for their substantial assistance to me in terms of providing me with quite detailed background information when I sought it, without requiring me to wait 30 days and without charging me any fees. That same thanks is also extended to the clerk of your committee and his assistant. Without the assistance of those individuals I have just named, it would have been very difficult for me to assist the groups I work with, let alone come and make a presentation to you. I would like to note that for the record.

In terms of freedom of information, it is perhaps useful to spend a few seconds on what I do. In essence, I work with low-income groups who do not have any money, and therefore I do not make any money from those groups. I am on a disability pension, so any money that is due for

fees comes out of my own pocket, because the groups do not have money to pay.

I think it is important to revisit the purpose of the act we are reviewing here. The purpose, I think, is to make information available, and not only available but I think it needs to be made in a timely fashion as well. The provision of information to groups who do not have money to pay for it is in fact in the public interest because it reduces "us and them"-ism between the groups and the organizations or agencies that provide services to them.

Where I do a fair amount of work with public housing tenants, a lot of the anger and frustration arises from misinformation provided by housing authority staff to tenants. It is after spending about \$400 to access public housing manuals that I have discovered it is in fact information that is not correct that is being provided to tenants. I am not talking only of tenants. People on social assistance or people who do not have money to avail themselves of this act ought to have equal access to the information this act could perhaps provide them with. I will get in a few minutes to recommendations of how you might facilitate that.

I will give you an example of something I did in Regent Park in 1989. In Regent Park there was a substantial problem with security—there still is—with drug dealers, etc. At the same time, the local housing authority, both behind closed doors with me and also in public meetings with the tenants, was repeatedly saying, "We don't have the money to do the repairs you suggest need to be done," and so on. My use of the Freedom of Information and Protection of Privacy Act aided myself and other tenants in Regent Park to become aware of Ontario Housing Corp policy that requires local housing authorities to comply with local bylaws. A search of the city of Toronto's local housing bylaw yielded the information that the Regent Park buildings were not in compliance with the city of Toronto bylaw.

A three-page presentation was made to the Mayor's Task Force on Drugs in 1989, passing to it the one sheet of paper that outlined the OHC directive to local housing authorities to comply with local bylaws, together with the relevant sections of the city of Toronto building standards bylaw. From then on, the city of Toronto, which is much more capable and has vastly more resources available to it, was able to bring some pressure to bear not only on the local housing authority but I think also the provincial government. As a result of that, a couple of million dollars anyway has been and is currently being expended in Regent Park, hopefully improving the lives of the people who live there and also the staff who must work there.

It is also important that people who lobby government or sit down with government staff to discuss issues with them be well informed about the issues they are discussing. It is to that end that I have spent a considerable amount of time with this legislation, and I must say it is complex legislation. From time to time I have had some fairly serious debates with freedom of information and privacy coordinators who choose to interpret the legislation one way or another, and because it is legislation and because it is written the way it is, it is subject to interpretation.

What needs to happen is that some change takes place that sees information being generated at the front end so



the information can be classified at the front end as being either accessible or exempt in the first place. I would include all classes of information except personal information; for example, a housing authority file ought to be kept confidential, other than made available to me.

Proposals on changes to be made in the housing authorities or proposals for changes to be made to the welfare system, etc, ought to be available, not only because people who are affected by the systems may have comments or suggestions that could be of help to the government, but because people who are external to the users of the system and external to the government may have solutions or ideas that could be of value.

To tie things down so that you have to wait, I would say, an average of 45 days to get any kind of documents out of the government when you ask for public information really impedes the process and makes it adversarial. While the intent initially was perhaps co-operative, I think the legislation and the way some people use it has made it an "us and them" kind of thing. It has certainly resulted in my spending an inordinate amount of time reading common law and legislation and talking to people about, "Gee, how do I get that thing?" as opposed to saying, "Gee, what is the impact of that thing and how can we as users or recipients assist in developing a system that makes more sense and that is better for the people concerned?"

1730

A couple of words about compliance: Compliance in the main is there, but I think there are some difficulties with compliance, such as delay and not disclosing information because people believe it is not disclosable. I think there ought to be serious consideration to reworking the legislation so that the freedom of information and privacy co-ordinators are given a bit more authority to tell people in the various ministries, "You're taking too long in replying to a request," or, "The information you are choosing to withhold is not information that you can withhold, disclosure is warranted," in whatever case it may be.

At the same time as increasing the authority of the freedom of information and protection of privacy co-ordinators, I also recommend that training be increased, not only of the co-ordinators but also of the people who must act in response to the authority that is delegated to them by their respective minister or executive director, whatever the case may be.

Let's talk about the question of fees. The fees are too much; 20 cents a page is a bit out of line, I think particularly when we are looking for stuff that we all know can be produced at half a cent to a cent, maybe two cents a page. I am talking about policy manuals and background papers and minutes of boards or whatever. That sort of information is, I would submit, best placed on a CD ROM or some similar electronic medium that might be available through the reading rooms of ministries or perhaps the Toronto Reference Library or some other such central location so that people could go every six months and perhaps look up the Ontario Housing Corp board minutes, for example, if they wanted to, or the Social Assistance Review Board decisions or whatever, and take from them what they see fit and not take in what they do not want. Clearly on that sort of information the respective legislation for those different

institutions makes it clear that certain parts of those institutions and parts of the operations of the institutions are public in the first place. Let's get that already public information out of the way so that ministry staffs are not having to deal with each request as if it were, "What can we deny first," and then talking about what can be disclosed.

I do not have any more comments at this point. I do not know if there are any questions.

**The Chair:** First of all, let me apologize to you, Mr Latchford, on behalf of Steve Owens, who had to leave to go to another meeting, but I believe I have some questions.

**Mr Frankford:** I think more a comment than a question. I would really like to compliment you and thank you for coming, because I think it gives a very concrete example of how access to information is used in very beneficial social ways. Apart from what information should be available, I really like your bit about the media and your reference to CD ROMs. As you say, the technology is there to make things very easily available and I am really very pleased that you brought that up on your own.

**Mr Latchford:** If I just might respond quickly, I think in my work over the years in working with groups, it has become increasingly important to me that I not be the carrier of problems or gripes, but rather someone who can help both parties, I guess, or sides look to solutions. Obviously there is a cost involved, so that was the reason for my looking at that solution. Also, I own a couple of computers.

**The Chair:** Thank you, Mr Latchford, for coming along here this afternoon and making your presentation. When the committee presents its report to the House, you will receive a copy of that report, along with all the other people who have presentations to the committee.

#### ONTARIO CANCER TREATMENT AND RESEARCH FOUNDATION

**The Chair:** I would ask the witnesses from the Ontario Cancer Treatment and Research Foundation to come forward, please. Thank you for coming along here this afternoon. Sorry we are running somewhat late. That seems to be always part of the process. Would you state your name and the position you hold within your organization for the record, please?

**Dr Holowaty:** My name is Dr Eric Holowaty and I am the director of the Ontario Cancer Registry. I am responsible for the overall operation of the registry, including security concerns and requests for access for the purpose of research. With me today is Dr Aileen Clarke, who is vice-president and head of the division of epidemiology and statistics at the OCTRF, who was previously the director of the registry. Also with me is Dr Derek Jenkin, who is vice-president and chief executive officer of the Toronto Bayview Regional Cancer Centre.

I understand it is customary at these hearings to have one person only make the presentation, but I would like to share this task with Dr Jenkin. I would like to present our foundation's view of the impact of the Freedom of Information and Protection of Privacy Act on the Ontario Cancer Registry.



**The Chair:** We generally like everybody to participate in the proceedings. It may have been a tradition in the past—I am not sure of that—but everybody here today is welcome to jump in at any time and give their two cents' worth.

**Dr Holowaty:** Thank you. Dr Jenkin will present our foundation's view on the implications of this legislation on patient care in our regional cancer centres. I will not present the entire brief, as I have distributed it to you, but I will present approximately half of it.

The Ontario Cancer Treatment and Research Foundation, which I will refer to subsequently as the OCTRF, was incorporated in 1943 by an act of the provincial Legislature to conduct a program of diagnosis, treatment and research on cancer throughout Ontario. Included within the objects of the OCTRF, are the adequate reporting of cases and the recording and compilation of data, with the provision that the data be used for medical and epidemiologic research. This objective is met through the establishment and maintenance of a province-wide cancer registry, known as the Ontario Cancer Registry, or the OCR for short.

The OCTRF is a schedule 2 agency and does not fall directly under the Freedom of Information and Protection of Privacy Act. If those who supply the registry with cancer patient information, currently on a voluntary basis, fell under the provisions of the act and were curtailed from sending information to the registry, the effect on the registry would be disastrous, negating most of its usefulness because of incompleteness of registration.

I want to provide more details about this concern, but first I will begin with a very brief description of the operation of the Ontario Cancer Registry. It has been operated by the OCTRF since 1965 and it is a vital element of cancer control in Ontario. Literally hundreds of requests for information are filled each year from a broad array of agencies and individuals. Appendix B describes the users of the Ontario Cancer Registry and provides more detailed information about well over 100 requests we have filled from the provincial government since 1983.

1740

The Ontario Cancer Registry is one of the largest population-based cancer registries in the world. In the year 1989 alone, almost 40,000 new cases of cancer were diagnosed in Ontario. It is anticipated that this number will increase by a further 50%, so that by the year 2000 there will be approximately 60,000 people newly diagnosed with cancer. This rapid growth in the burden of cancer in Ontario has major implications for those planning cancer care services. It also serves to illustrate a very useful purpose of the OCR, namely, to project the future burden of cancer.

The OCR employs a unique method of cancer patient registration, based on computerized record linkage techniques for linking cancer patient files that were originally prepared for other purposes. There are four of these files. They include all hospital separation records with a diagnosis of cancer, and these are supplied by the Ministry of Health; all pathology reports with a mention of cancer, and these are supplied by all licensed pathology laboratories in the province; reports from the Princess Margaret Hospital and all of the foundation's regional cancer centres; and

finally, reports of death certificate information for all Ontario residents dying in Ontario, and these are supplied by the registrar general's office.

All of these source files contain identifying information that includes patient name and date of birth for all of them and health insurance number for three of the four, as well as diagnostic information. A detailed listing of all the data elements on these four files is in appendix C. Again, the reporting of this patient-specific information is done on a voluntary basis.

The accuracy of our record linkage is heavily dependent on the completeness and accuracy of identifying information on the files that are supplied to us. Because of the dynamic nature of the registry—that is, new records describing the same patient must be allowed to link to older records—and because of the need to accurately identify subsequent cancers in the same patient, it is essential that personal identifiers, including name, date of birth and health insurance number, continue to be collected and retained. Without this provision, multiple counting of a single cancer would be a serious problem, grossly inflating estimates of cancer risk in Ontario. These identifiers are also necessary to ensure that data about individual patients in the registry are complete and accurate. Retention of these identifiers also ensures that good cancer survival statistics are produced and that patient-specific information is available for certain epidemiologic studies.

If the OCR were to fall directly under the provisions of the Freedom of Information and Protection of Privacy Act, it would appear that it would be operating in violation of this statute. Under subsection 38(2),

"No person shall collect personal information on behalf of an institution unless the collection is expressly authorized by statute, used for the purposes of law enforcement or necessary to the proper administration of lawfully authorized activity."

Further, under section 39, "Personal information shall only be collected by an institution directly from the individual to whom the information relates."

While the OCR does not yet fall under the Freedom of Information and Protection of Privacy Act, it would seem that at least two of its suppliers do, the Ministry of Health and the Ministry of Consumer and Commercial Relations. If access to the information provided by these suppliers is denied, then the usefulness of the OCR would become so limited that the operational cost probably would no longer be justified. The notion that explicit patient consent ought to be required as a prerequisite of cancer registration, while a noble idea, would be quite impractical. It is clear from the experience in Europe that such a requirement would produce an uncontrollable selection bias and an unacceptable distortion of cancer rates and frequencies. The effect would be so disastrous that the data would be largely uninterpretable and of little value.

Now I want to say a few words about the uses of the data in our database. Under the Cancer Act, information in the registry is to be kept confidential and not to be used or disclosed to any person for any purpose other than for compiling statistics or carrying out medical or epidemiologic research. Tremendous advances in health have been



achieved over the past century as a direct result of epidemiologic research and environmental controls. With the application of epidemiology to the study of chronic diseases we have gained much useful knowledge about the role of occupation and lifestyle and the environment as causes of chronic disease. Most epidemiologic research depends on the collection and use of personal information.

In such studies it is often difficult to gain a fully informed consent from the subjects under study. For example, in many record linkage studies in which a historical roll of subjects who have had an exposure of many years in the past, such as may be defined from employment records, is matched to a current disease register we have the opportunity to study in an efficient but powerful way, the possible association between an exposure and an outcome. For many chronic diseases, particularly cancers, causal exposure may precede clinical detection by 20 or 30 years or more. Obtaining consent from all subjects is usually impossible for the researcher. Many subjects will have left the workplace and will be untraceable, while many others will often have died.

In another form of epidemiologic study known as case-control studies, where subjects who are known to have had the disease of interest are interviewed about previous exposures and compared to subjects not known to have the disease, a fully informed consent is often undesirable. That is, full release of all study details may cause a large reporting bias in such studies, not to mention undue anxiety and distress about potential causes that are later disproven.

In spite of many citizens wanting reassurance that their personal information is not being misused, it is hard to find examples of public disquiet related to use of personal information for epidemiologic research. We are not aware of any examples of such studies ever breaching patient confidentiality. We believe that most citizens, including cancer patients, are glad that health information that is routinely collected as part of patient care and administration is put to good, judicious use by epidemiologists. This information may be a source of help to many others, without causing undue harm or embarrassment to cancer patients. Over the years, we have received many unsolicited letters from cancer patients to this effect.

We believe that citizens should have control over the extent to which information about them is available to others. However, we believe this right is not an absolute one and that the risk of personal harm must be weighed against the benefits to public health and safety. There are many instances where the public interest is held to override the claims of the individual, including mandatory notification of infectious diseases and births and deaths. In order to protect good epidemiologic research, it may also be necessary to make the reporting of cancer mandatory in Ontario, as it is currently in some other Canadian provinces.

Now I want to say a few words about the steps we take to protect this data. The Cancer Act of Ontario, which I have placed in appendix D, legally enables the Ontario Cancer Foundation to collect information relating to cancer patients treated in Ontario. Under section 5, the object of the foundation, includes, "(f) the adequate reporting of cases and the recording and compilation of data;" This section is

not very precise. It certainly does not impose a mandatory requirement on anyone to report cases of cancer.

The Cancer Act also states, "Any information or report respecting a case...shall be kept confidential and shall not be used or disclosed to any person for any purpose other than for compiling statistics or carrying out medical or epidemiologic research." All employees and researchers with access to identifying information must sign an oath of confidentiality.

The computerized database resides in a mainframe computer which is dedicated to the operation of the registry. This computer is located in a locked room with restricted access at the head office location of our foundation. It is equipped with a RACF security system with strict control over passwords. On-line access to this database is only permitted for staff who require access as a condition of their employment and who have signed a security briefing attestation. Off-site access is not permitted. All paper reports containing identifying patient information are stored either in locked cabinets or in a locked filing room, when not in use.

Policies and procedures exist concerning the processing of requests for access to cancer patient information. I have appended these policies and procedures in appendix G. Requests from researchers must be in writing and they must be sufficiently detailed to enable decisions to be made about the scientific merit of the proposed study and the necessity for identifying information, as well as the determination that safeguards will be adequate to ensure confidentiality. Requests for the release of identifying information for the purpose of patient contact must be reviewed and approved by a subcommittee which is responsible to the board of the foundation. Summary reports or papers describing cancer patient information that may be of an identifying nature, and this includes small frequencies in small areas, are not permitted. Where patient contact is necessary for proposed study, ethics review committee approval is also required, as well as written consent from all attending physicians.

In summary, both the procedures of registration and the optimal use of data in the OCR make it essential that individual cancer patients be identified. If registration in the OCR is to be accurate and complete, we will continue to need to collect data about individual patients from the four sources that currently report to us. It is essential that personal identifiers, including the patient's name, date of birth and health number, continue to be collected.

**The Chair:** Sorry to interrupt at this particular point. There is going to be a vote in the House. It is possibly a five-minute bell. I think we had an agreement earlier that we would go and vote and come back and continue these proceedings once the vote has been taken. So we will adjourn the committee hearings until after the vote and we will hold the clock.

The committee recessed at 1751.

1806

**The Chair:** Sorry for the interruption, but you may again proceed.

**Dr Holowaty:** Let me finish with a summary of my presentation.



Both the procedures of registration and the optimal use of data in the registry make it essential that individual cancer patients be identified. If registration is to be accurate and complete, we will need to collect data about individual patients from the four sources that currently report to us.

The requirement that patients give explicit consent in order to be registered in the registry would cause uncontrollable selection and unacceptable loss and distortion of cancer data, negating most of the value of the registry. Adequate safeguards for protecting patient confidentiality can be met through appropriate security procedures that are currently in place. In order to protect the registry and its suppliers we believe it will be necessary to make the reporting of cancer legally mandatory in the province of Ontario.

We believe the data protection laws of Ontario should ensure reasonable but controlled access to health records and databases so as to facilitate good research, while at the same time safeguarding against unauthorized disclosure.

As custodians of cancer patient information in the registry, we have a duty to ensure that these records are made available for the purpose for which they were collected, and that is cancer research, but at the same time to protect them from improper use. We ask for your support to ensure that the Freedom of Information and Protection of Privacy Act, whether or not it is extended to cover additional agencies, including the Ontario Cancer Treatment and Research Foundation, will not prejudice the operation of the Ontario cancer registry. We ask you support to our recommendation that the reporting of cancer be made mandatory in Ontario.

On behalf of my colleagues, I want to thank the members of this committee for their attention. Before I turn it over to Dr Jenkin, I would like to ask if there are any questions relating to this issue of the Ontario cancer registry. Again, thank you for your attention.

**Mr Frankford:** I would love to have an extensive discussion, as I happen to be in a position not only as a physician and legislator but also a patient, so presumably I am registered there, but maybe I should be able to check.

**Dr Holowaty:** To tell you the truth, the database cannot be used to verify that information. We do not have the right to search it for that reason. It is conceivable that at some time in the future that information, if indeed that is true, may be used for research purposes, but we cannot use it for any other reason.

**Dr Clarke:** Under the present cancer legislation, it can only be used for medical and epidemiological research, so that on one occasion when I was director of the cancer registry I was asked to disclose a patient's information for the care of that particular patient and the Cancer Act legislation did not permit me to do so. So if you were to ask Dr Holowaty, in a letter of writing, if your name was in the cancer registry, he would have to tell you he would be unable to release that information to you. But if your name were on a hospital discharge, you have a pathology report or you were seen at either the Princess Margaret Hospital or at a cancer treatment centre, it is very probable that your record is in there without your voluntarily giving that information and having given informed consent that information be in the cancer registry.

**Mr Frankford:** I do not want to hold up people's time, because I could go on. Switching to my physician role, what if I wanted to do a small study on males of my age with my condition and look for some common factor?

**Dr Holowaty:** It would depend on the detail you would require for that study. If you required detail about individual patients that might include information of an identifying nature, even if you had no intention of contacting those patients, you would be required to submit a protocol that would be reviewed to determine not only that you take adequate precautions to safeguard patient information, but that there was sufficient scientific merit, as a condition to release of that information. We have received many questions that can be answered quite easily just through data aggregates that we routinely assemble. Much of that sort of information can be provided very quickly to patients or many others—that you will see we describe in this brief—who use the registry.

**Mrs MacKinnon:** I am sitting here with very mixed emotions, because I was absolutely unaware that this type of facility existed. So I am sitting here asking myself: "It exists; why? Obviously for research." But I am also saying to myself—there is cancer in my family, so I am a bit emotional—"Do I want it spread all over the country that this cancer exists?" Also I am wondering, is this the only one there is in Canada? If so, why?

**Dr Holowaty:** If I can answer, there is a cancer registry in every province and both territories of Canada. This is one of the few nations in the world where we have complete cancer registration in our country.

As I said in my presentation, there are no instances, that we have any knowledge of, of a single breach of patient confidentiality as a result of epidemiologic research. We believe that the researchers take this very seriously and exercise every possible precaution to safeguard this information. Yet it is not well known that these registries do exist and carry on research.

I did not describe the nature of the research. It is in my brief and you will see there are a number of projects. I describe half a dozen currently under way that are of direct benefit and very relevant to the citizens of Ontario, whether it is shedding light on the relationship between the child and leukaemia and nuclear reactors, or a relationship between electromagnetic radiation and cancer, or the effectiveness of cancer screening programs. There are a number of these studies under way. In all of these cases, there is no direct patient contact, but individual patient information is necessary for the purposes of accuracy of the study. Again, this is in my brief.

**Mrs MacKinnon:** You say there are these cancer registries all across Canada and in both territories. Are they—the only word I can think of—interconnected?

**Dr Holowaty:** They are. There are agreements to exchange information about cancer patients with other registries. For example, if Ontario residents living in northwestern Ontario near Kenora venture to Winnipeg, as many do for their cancer care, then that information will be supplied by the Manitoba Cancer Treatment and Research Foundation to our foundation, so that we will have accurate



and complete information about all Ontario residents who have cancer. There is an effort, at the national level, to create a national database, so that all of this information may be brought together in a single database, but the effort has been under way for several years and will require careful agreements in order to build such a database. In the event that such a database is created, it will be the largest national database of its kind in the world.

There are over 200 such cancer registries in the world, but there is no nation, I believe, that has a registration as complete as Canada's.

**Mrs MacKinnon:** Just one last short question: Does the patient know about this before the name goes on the registry?

**Dr Holowaty:** That is an important question. I believe the majority of patients will not know about this.

**Mrs MacKinnon:** I thought so.

**Dr Holowaty:** This is probably because, as I described, we use files of information that are prepared for other purposes, and copies of these are transmitted to us in order to allow us to build a complete and accurate cancer registry. We are not out in the field to collect this information, it is transmitted to us. This is done for reasons of efficiency and increasing concern about the cost. Within health care, we know that this is a more efficient way to build a cancer registry. We would certainly have no objections to sharing the knowledge with cancer patients that such a registry does exist, though.

**The Chair:** Thank you. Did you want to make a comment?

**Dr Clarke:** Just as a supplementary, but I think my colleague can speak to it. It has been found that if you were to say to a cancer patient who has just being diagnosed with a disease that we have to realize means that one out of the patients diagnosed will die and therefore it is a dread disease to be told you have, "We would like you to sign this form to allow your information to be sent to the Ontario Cancer Registry," I do not think any patient is in a state to make an informed decision. They want to know, "What is the Ontario Cancer Registry? Is my name going to be broadcast to the world?" What has been found is that when that provision is introduced, which happened in Germany with the reunification of Germany, the East German cancer registry had to close, because in 50% of cases the physician does not wish to ask that question and the patient does not want to think about it at that point in time.

**Mr Owens:** Would non-physician groups wishing to carry out studies—and I am referring specifically to unions, for instance, that are wanting to do health and safety research—be able to access this registry, and how would they go about doing it?

**Dr Holowaty:** Many studies have been undertaken of the relationship between occupation and cancer in Ontario. Most of the involvement has been through the Ministry of Labour, though. That is often how trade unions deal with their concerns. Again, the same procedures apply. A protocol has to be submitted. There has to be scientific merit. Where a report is to be prepared to describe the findings,

all care must be taken so that no information of an identifying nature is released. This is particularly problematic in small workplaces, where perhaps 100 or 200 employees may be working. Just the knowledge that one has a particular kind of cancer, without any obvious identifiers, may be enough to link who that person is in that workplace. So we recognize that concern. In an instance like that, we would not allow the release of such a report. There are ways to mask that information yet none the less make the point whether there is scientifically valid information that there is an increased risk in that workplace setting.

**The Chair:** Does anyone else want to make further comments?

**Dr Holowaty:** If not, perhaps I could introduce Dr Jenkin, who wants to present his concerns about the impact of the legislation on cancer patient care. Dr Jenkin is a radiation oncologist and specializes in the care of children with cancer. He is also the chief executive officer of the Toronto Bayview Regional Cancer Centre, which is one of the largest cancer centres in Ontario.

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**Dr Jenkin:** I only wanted to speak very briefly on the impact of the Freedom of Information and Protection of Privacy Act on practising cancer physicians in the province. Before I do that, though, I have one comment in relation to the cancer registry. It is of extreme value to academic physicians who are evaluating the treatment of cancer and the outcome of cancer.

Just one example: In this last year, I was involved with a study at the Hospital for Sick Children of one particular childhood tumour where we knew that at that hospital two thirds could be cured, which is a result as good as any in the world and perhaps better than most. We were able to ask the question, what is the result in the rest of the province? We found that in the rest of the province substantially less than half of the children were being cured. That has led to another study to evaluate why that is the case. I think one could predict with reasonable certainty that when that is completed, recommendations will be made that will actually improve the outcome in the rest of the province by one mechanism or another. To a practising physician, the cancer registry provides valuable data that allows important studies to be done. Obtaining a cure in cancer is not only a question of getting new knowledge; it is a question of properly applying current knowledge.

Coming back to the more general question of the impact of the act on the practising cancer physician in the province and perhaps one could say more generally to physicians practising in the province, I think physicians in general are very supportive of an act of this type. Their concern is really only one, and that is that the act not directly or indirectly do anything that would be harmful to either the patient or the community at large. Clearly that is not the intent of the act, but it is always a difficult issue that freedom of information and protection of privacy are finely balanced. It is not easy to properly weigh those two extremes to get the appropriate interchange of information.

What I thought I would do was just describe one area where there is concern and two areas where there might be



concern. As an area where there is concern, I would just describe one current process at Sunnybrook Hospital that has changed because of legal interpretation of the current act. That relates to what happens to the final note summarizing a patient's hospital admission. It is true of cancer patients and all the other patients in the hospital that in the past those notes were circulated to all the referring physicians automatically on discharge of a patient as an appropriate transfer of information between the physicians identified by the patient as caring for them.

In the last year, that has been changed. We are not allowed to send out those notes without having in our possession the signed consent of the patient. That may seem a good principle in one way, but in practice one finds that frequently that consent is not available and signed. In those circumstances, these notes are not allowed to go out by the hospital.

I have no doubt that in a majority of those cases it is a failure to get the form signed and not an indication of a patient's wish not to have the information sent out, so I think at the present time we are substantially risking some patients by not transferring appropriate information. In that regard, I think the act could be clarified in determining who has the initiative in saying yes or no to the transfer of information, that in this particular—

**Mr Frankford:** If I can interrupt and ask for clarification, is this a universal hospital policy now or is Sunnybrook special?

**Dr Jenkin:** I am sure every hospital has a somewhat different policy. Some will be doing that; some will not be doing that. I really have no information on what proportion are doing that at the moment.

**Mr Frankford:** But this is a consequence of the—

**Dr Jenkin:** It is a consequence of what is felt to be a change in this type of act. At the moment the onus is on the hospital to obtain consent. It seems to me that the same end could be achieved by notifying patients on admission and providing them with a form that allowed them to say, "No, I don't want this information to be sent out," but if they do not take that action the information will be sent out.

In that regard, we sent out from the cancer centre over the last 10 years more than a million pieces of information to physicians about patients. I have to say that in the last decade not a single complaint has been received from a patient on those million bits of data transfer with regard to

some breach of privacy. I think it has generally been the experience in hospitals that patients very rarely feel there has been a breach of privacy in what has been the classical method of transferring information between physicians. That is one area where current practice has changed and I feel has changed to the disadvantage of the patient.

There are areas of potential concern. Cancer care is interdisciplinary. What that means is that several physicians are involved in making a treatment decision on a diagnosis with regard to a patient with cancer. They clearly can only make that decision if they have total access to the information on that patient. Clearly it is in the patient's interest and it is virtually always the patient's wish that the information be appropriately shared, but there is concern that patients may be required to sign something to say that information can be shared. If that were the case, it undoubtedly would impede the transfer of that information just as it is currently impeding the sending out of summary notes about a patient's care in hospital.

We have that type of concern. Then, when it comes to care in a cancer centre, and that is long-term care where we follow patients for many years, when patients first come to us they sign a consent form that says the data relating to their illness can be used for research purposes—and that gives us authority to send it to the cancer registry, although patients very rarely ask what that means, "using it for research purposes"—and on the other hand that we can send information to all their physicians.

With that consent, we assume that consent is of indefinite duration and we never again ask a patient for consent to do that. There again, that has never been any sort of problem for us. I would certainly hate to see any legislation that meant every X number of months we were required to obtain a new patient consent to say we could continue with that practice. I think it is fair to say that in health information, the classical methods of practice have in fact been very successful and have rarely led to problems.

**The Chair:** Did you wish to make a presentation?

**Dr Clarke:** No.

**The Chair:** This committee stands adjourned until Wednesday, October 30. Thank you for coming along here this afternoon. I am sorry you had to wait a little extra, but sometimes that is how it goes in these public hearings.

The committee adjourned at 1828.



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M-22 1991

M-22 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Wednesday 30 October 1991

## Journal des débats (Hansard)

Le mercredi 30 octobre 1991

### Standing committee on the Legislative Assembly

Review of Freedom of Information  
and Protection of Privacy Act, 1987

### Comité permanent de l'Assemblée législative

Révision de la Loi de 1987  
sur l'accès à l'information et  
la protection de la vie privée



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Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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Avec le nouveau système, la numérotation commencée en janvier 1991 s'arrêtera à la dernière séance de la Chambre et des comités de l'actuelle première session. Une nouvelle série commencera le jour de l'ouverture de la deuxième session et des sessions suivantes : numéro 1, page 1. Les rapports des comités seront également numérotés à partir de la première séance de chaque comité pour une session parlementaire donnée.

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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 30 October 1991

The committee met at 1540 in room 228.

### REVIEW OF FREEDOM OF INFORMATION AND PROTECTION OF PRIVACY ACT, 1987

Resuming consideration of a comprehensive review of the Freedom of Information and Protection of Privacy Act, 1987.

**The Chair:** I call the committee to order.

**Mr McClelland:** I would like to make a couple of brief remarks. Having seen Mr Cooper's tie, I regret that I am saying this because I want to see more of the same. I understand this is my last day with this committee. As General MacArthur said, "I shall return, all things being equal," if nothing else to visit some old friends in Cincinnati together with Mr Cooper. I just wanted to say thanks, I have enjoyed it. I regret that I am moving elsewhere. Be forewarned, Mr Cooper: I will be back and I like your tie.

**Mr Villeneuve:** Is this a sabbatical for your leadership run?

**Mr McClelland:** This is to further my education elsewhere. I just wanted to make those comments before I move on.

**Mr Owens:** Just a comment from the government side of the committee, we are shocked to hear that Mr McClelland is leaving—shocked and appalled, as the Globe and Mail would say—but we have appreciated the contribution Carman has made to the committee, his insights—all two of them—the brainstorm that he claims are brainstorm but perhaps are only slight drizzles. We are not pleased that Carman is leaving and I hope that his successor will be as kind to the third party members as Carman has been in showing guidance and leadership.

**The Chair:** On behalf of all committee members, we are sad to see you go and wish you well because I know you have contributed to the non-partisan air that exists on this committee. Your help and advice have contributed to that. Thank you for all your participation.

### FEDERAL EMPLOYERS TRANSPORTATION AND COMMUNICATIONS ORGANIZATION EMPLOYERS' ADVOCACY COUNCIL

**The Chair:** At this point I would ask the first set of witnesses to come forward. I understand you are from the Federal Employers Transportation and Communications Organization and from the Employers' Advocacy Council. Thank you for coming here this afternoon. If you could each state your name and what position you hold in your organization, please.

**Dr Rickwood:** My name is Dr Roger Rickwood. I am co-chair of the workers' compensation subcommittee of the Federal Employers Transportation and Communications

Organization. I am also a director of health, safety and environmental affairs for Canada Post Corp.

**Mr Cryne:** My name is Stephen Cryne and I am the executive director of the Employers' Advocacy Council. You have a brief that was prepared rather hurriedly by our office this morning and I do apologize for the error in identifying this committee as the standing committee on resources development. Please excuse my oversight on that.

**Dr Rickwood:** I have with me two of my colleagues: Charles Sheehan from Canadian Pacific Railways, the general claims agent for this region, and Mr Curtis McDonnell, a solicitor from the Canadian National Railway.

This represents the first time our organization, and for that matter the Employers' Advocacy Council—Canada Post is a corporate member of the Employers' Advocacy Council as well—have tried to look at the linkages between the freedom of information act and the Workers' Compensation Act. It has not exactly been a topic that has had a great deal of discussion.

I propose to make some introductory comments and then I think it would be appropriate for Mr Cryne to make his comments, then we could deal with questions collectively, because the subject matter we deal with is the same subject matter essentially.

Our first concern is that the board did not appear. Even though the board submitted a written brief, we would have expected the board to come and make a presentation to this body in support of its brief because we think that would help in the process of getting the issues out and discussed. That is a concern we have. The federal employers' group does not take any particular position on the Workers' Compensation Board brief. It stands for itself. I understand Mr Cryne, however, probably will deal with certain aspects of the board brief.

On behalf of the federal employers, we first of all are in a unique situation in that for some purposes we fall under provincial legislation and for other purposes we fall under federal privacy legislation. Exactly where the boundary is has never really been determined by any court. To some extent, we are not sure what all the impacts might be on us as federal employers.

What I wanted to do today was talk about some concerns we have and overall goals that we think should be looked at or at least taken into account by the committee in doing its review. We understand you are mandated by statute to review the act to see how it has been performing and whether any amendments should be made to make sure it works better and that there are no abuses.

We have some concern, as employers, that information we supply in trust to the compensation board may be accessed by third parties and used for purposes other than what is originally intended. This is dealt with in the board brief and it is also dealt with in Mr Cryne's brief.



We wish to assert the principle that information we supply to the board should stay with the board and should not be taken out and used in any way that could individually identify a particular company. It should be used only in a generic way for general statistical purposes, because that is the way we understand the material is given to the board. That is the first principle we want to put before you.

The second principle comes from a concern—and we have heard rumours but we have not been able to track them down in any specific way—that there is a proposal to amend the act or at least have the act interpreted in a way that would make it much more difficult for employers to get information under section 77 of the Workers' Compensation Act, and that there would be an additional stage of review required by the privacy act before we could get access to information through section 77. When there is a question in the file, we request, through section 77, access to the administrative file and the medical file of the worker. The worker, if he has any objections, can indicate so and that matter is taken to the Workers' Compensation Appeals Tribunal and the tribunal decides whether the information can be released or not. We think the present provisions under the Workers' Compensation Act are sufficient to maintain the privacy and the appropriate use of the information, and we do not see any need for additional control.

What has reached our ears is a concern that rather than be treated as clients of the Workers' Compensation Board we might be treated in a third-party situation and be put through a more extended process by which we would have to require information which we need to deal with files that we may find doubtful. For us, getting access to information quickly is very important in trying to get workers who are injured back to work in a modified-duties type of situation, so anything that inhibits our getting information quickly could delay the speedy return to work of the person and the appropriate kind of rehabilitation and treatment.

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Also, as employers, we are not interested in challenging every claim. There is some view that employers go around challenging everything. If we can get adequate information that shows the case is a legitimate and well-founded claim, then we have no problems with it and we will allow the board to continue processing and handling the claim.

Often, however, we are in a doubtful situation. We do not know the dimension of the claim and, for that reason, the present procedures under the compensation act appear to be working adequately. We do not know of any abuse and over the years we have had an opportunity to read the various section 77 applications that have been made and have gone on appeal to the Workers' Compensation Appeals Tribunal, and we think that the tribunal has handled those issues in a satisfactory manner. Sometimes the employer is successful, sometimes the employer is not, but we have confidence in the appeals tribunal in discharging that duty to the public of Ontario, ensuring that information is only provided when there is a just and adequate need for that information. So I guess we are here seeking you to scrutinize any kind of application that might be made to you to change that provision, because we do not feel that is appropriate.

Those, in general, are the comments the federal employers' group would like to make. What I propose to do is let my colleague from the Employers' Advocacy Council, Mr Stephen Cryne, make his comments, and then if we can be of assistance in answering any questions or providing you with any further information you would like, we would endeavour to do so. We realize this is not one of the topics that probably gets a lot of discussion or a lot of scrutiny, but we think it is an important matter and we as employers want to play a larger role in looking at the linkages between the Freedom of Information and Protection of Privacy Act and the Workers' Compensation Act, to make sure that most statutes work well and the interests of the public in Ontario are well served.

Perhaps I should describe the federal employers' group before I close. We represent 19 companies across Canada, with some 200,000 employees in the province of Ontario. The major transportation and communications companies—Canadian Broadcasting Corp, Canadian National, Canadian Pacific, Air Canada, Canadian Airlines, Bell Canada—are the companies we represent, and as major employers we try to see that appropriate programs are in place to get our injured workers back to work. We would like to see that this is done in the fairest and most timely fashion possible.

**Mr Cryne:** By way of introduction, the Employers' Advocacy Council is a volunteer non-profit organization of employers across Ontario. We have been incorporated since 1986 and currently over 1,500 members belong to our organization. Our objectives are relatively straightforward, and those are to effect constructive change to the Ontario workers' compensation system, to lobby on behalf of employers before both the board and the government on major policy issues, and to educate employers on all aspects of workers' compensation.

Echoing the comments of Dr Rickwood this afternoon, it is important that we look at the interaction between various pieces of legislation and the impact they may have upon the Workers' Compensation Act. The changes to other pieces of legislation could have significant impact upon the way with which the employer community is dealt with under the Workers' Compensation Act.

I would like to echo the comments on section 77, which deals with the access to information under the Workers' Compensation Act. The present situation works relatively well. The procedures that have been developed by the board are relatively well entrenched within the system now. They are well understood within all of the communities and they are relatively well followed for the most part.

The Freedom of Information and Protection of Privacy Act impacts upon the information collected and maintained by the board. Much of this information surrounds not only the individual claimant histories that are gathered by the board, which includes the medical information, etc, but also business information that is received from employers. This information includes financial information, business activity and staffing levels, and much of that information is provided to the board in accordance with subsection 97(1) of the Workers' Compensation Act.

We are concerned that the confidentiality of this information is maintained and that it is not released to competitors



in the business community. We understand that section 17 of FIPPA may be interpreted in such a manner that would not extend the exemptions set out in that section to the financial information supplied to the board by employers. We believe this exemption ought to be extended to that employer information collected by the board in the normal course of business. It is our opinion that FIPPA was not intended to require such disclosure.

In addition, disclosures would serve no public interest, as the board itself provides, to groups that may require it, certain statistical data such as accident trends, total claims, the employer base and the payroll base of certain industries; all of that information is made available by the board upon request. Any requests for specific firm information, however, would likely be made by individuals seeking to gain benefit from the release of such information.

There have been several requests made for information from the Workers' Compensation Board, and one instance of that was a listing of firms that were subject to certain penalties under the Worker's Compensation Act. It was felt by many in the employer community that this request was made for business purposes by a consultant, to go out and seek business from those firms that were presently under penalty situations with the WCB.

In reviewing the exemption criteria in section 17 and section 21, names and addresses are supplied to the WCB on specific registration forms, which must be completed by all employers who fall under the jurisdiction of the Ontario Workers' Compensation Act. This is commercial information, and meets the first part of section 17.

The information supplied to the board by employers upon registration with the board is supplied on WCB form 0944A; there is a copy of that appended to the submission I gave you. The registration form requires the employer to disclose information about the firm: its location; its Revenue Canada employer number; the total number of employees it has; senior management information, including social insurance numbers and home addresses of those officers; business references, and other activity including banking.

The firm registration form provided to the board explicitly states that all information is strictly confidential. It is clear that the intention of the board is not to release this information and that such release would only prejudice the individual employer. Employers filing such information with the board do so with this written, explicit guarantee in mind. To permit the release of such information would seriously undermine the openness with which employers supply this information to the board and disturb the relationship of trust that exists between the employer community and the board on this matter.

Under the provisions of section 21, disclosure of personal information is exempt. In our submission, corporate information can be construed as personal information. Indeed, much of the information that is provided on the firm registration form is of a personal nature. Names, addresses and social insurance numbers of officers, references and banking information are all examples of personal information.

In the Interpretation Act, the word "person" includes a corporation in every act unless the context requires otherwise. In our respectful submission, corporations ought to

be afforded the same protection as individuals in requiring release of information from the Workers' Compensation Board. In that regard, we support the submissions of the Workers' Compensation Board to this committee, which were approved by the board of directors of the WCB at its meeting on July 5, 1991.

In conclusion, we would like to ensure that the present access guidelines that exist within the Workers' Compensation Board are maintained. You have heard from myself and Dr Rickwood this afternoon that those procedures work relatively well, and we do not see any sense in changing them at this point. Thank you for your consideration.

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**Mr Owens:** Thank you for your presentation this afternoon. I guess it gives me cause for concern. I am wondering how you have heard that we may be thinking about this, or is this a hypothetical possibility that you raised here today? I have not heard of any plan to change legislation to allow this kind of information to be released. I can understand why people would want statistical information with respect to looking at accident trends, but in terms of the kinds of information that would be on the forms you have described, I see no need to release that information to the greater world. I realize that is not exactly a question, but I am just wondering how you came to present this as a concern. Has somebody told you that we are thinking about doing this?

**Mr Cryne:** There have been requests made under the provisions of the legislation, and there have been some arguments raised. In fact, our organization has a brief—I can leave that with the clerk of the committee—where we actually responded to a request where a consultant was trying to gain access to firm information. There was a legal debate as to whether or not that information ought to be released. That is the purpose of our bringing this issue forward. If you are referring to the amendments that we are contemplating under section 77 of the Workers' Compensation Act, then that is a different beast.

**Mr Frankford:** On page 2, about the board providing certain statistical information to groups which may require it, do you know the criteria? Can any group request this or do they ask that you show some reasonable interest in it?

**Mr Cryne:** It is not information about a specific firm. It would be more if I were the chair of a major trade association and I was interested in the performance of our association and the number of accidents that our association had encountered within the Workers' Compensation Board, to try to equate that perhaps to our assessment rates. Then I would be well within my rights to go forward to the Workers' Compensation Board and request that information, and in all likelihood it would release it.

**Mr Frankford:** I would just like to clarify what I am asking, and I will perhaps start by describing something which we had brought to us last week by the Ontario Cancer Registry. They register all individual cancer patients, so they have a great store of stuff, but potentially this is a valuable research resource. What we were given to understand is that they really control who researches it. You have to come forward and make your case as to why you



should be doing that research. Just seeing here what you say about the board, I am wondering whether a similar thing occurs, that you have to show the agency, as a sort of gatekeeper of the information, or if they say, "Anyone who wants it can come forward and get that aggregate data." Maybe this is not your area.

**Mr Cryne:** I think the board ought to be, as you phrase it, the gatekeeper of the information that is maintained there. The board has specific guidelines it utilizes in terms of the information it divulges. Information of a personal nature or upon which a claimant would bring forward a claim to the Workers' Compensation Board—there are provisions within the act which allow for that disclosure under certain conditions. There is no requirement upon the board to disclose information about a particular firm.

**Mr Frankford:** If a muck-raking journalist wanted to prove there was a high incidence of something in some particular industry, should that person have a citizen's right to go and ask for it, or should the Employers' Advocacy Council and the board have to recognize why he is asking that question?

**Mr Cryne:** I do not see why the board would choose to restrict that information, and indeed they do not, because they do make information public about the incidence of certain types of injuries and disablements that occur within the workers' compensation system. That information is made available.

**Mr McClelland:** First of all, grant me a personal indulgence to welcome a former law school colleague, Dr Rickwood, to the committee this afternoon.

I would be interested in hearing Mr Frank White's comments with respect to the concerns raised by Dr Rickwood about the potential implications of section 77, if anything is coming out of that that you are aware of. This might help us.

**Mr White:** I am not familiar with that. You would have to get somebody from the Workers' Compensation Board here.

**Mr McClelland:** Okay. I just wondered if you had happened across this. I do not have anything further.

**The Chair:** Thank you gentlemen for coming this afternoon.

**Dr Rickwood:** I would like to thank your clerk, Mr Doug Arnott, for the co-operation he and his staff gave to us in facilitating the attendance here today by both our groups. He did an excellent job and the staff did as well.

**The Chair:** Thank you for those kind comments. We will make sure both your organizations get a copy of the committee's report and recommendations on tabling in the House in December.

REGIONAL MUNICIPALITY OF PEEL  
POLICE SERVICES BOARD

**The Chair:** At this time, I would like to call upon the witnesses from the Regional Municipality of Peel Police Services Board. Thank you, gentlemen, for coming here this afternoon. If you could both state your names and positions you hold within the organization, you have up to a half an hour to make a presentation.

**Mr Obradovich:** I am Miles Obradovich, chair of the Regional Municipality of Peel Police Services Board.

**Mr Turnbull:** I am Inspector Barry Turnbull, the freedom of information co-ordinator for the Peel Regional Police.

**Mr Obradovich:** I will begin the presentation with just a few brief remarks. Inspector Turnbull will address you with the technical concerns that we have regarding the legislation.

We thank you for the opportunity to address you in respect to those provisions of the act that are identical or very similar to the Municipal Freedom of Information and Protection of Privacy Act, because we strongly feel there are some improvements that can be made to the act. We felt that in the interest of time for the committee, while you are considering these policy matters in respect to the provincial act, there would be no reason not to deal also with the municipal act at the same time. We understand this is the basis on which we were permitted to come today.

The concern we have with the act relates in part to the cost that must be borne by the municipality in complying with certain requests for information, requests which we think are not justified by overriding policy considerations.

We approached the act very seriously at our board and provided the service with the resources that would be required to adhere to both the letter and the spirit of the law. Those resources, in terms of setting up the bureau, are in excess of \$100,000 per annum. They are actually almost double that at the outset, but we believe those costs will come down as we sharpen our ability to deal with it. But the act does require us to take into account a number of exceptions which are set out in sections 6 through 13, and as a result, we require more than just one person to review the request and the information that is available before releasing any of the information.

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By the nature of our organization, we feel we cannot go at it half-heartedly. We have to be certain that we are right in providing information or denying it, and by the nature of some of these records, the protection of personal privacy is also very important and perhaps requires more time than other institutions may be required to expend on this subject.

It is also my understanding that the Management Board of Cabinet has received a statistical report covering the municipal experience with the act, and that this report parallels the experience in our jurisdiction. In our jurisdiction we have been able to collect this year to date only \$38.80 in fees, based on the tariff. We understand that province-wide, \$6,000 has been collected in fees from approximately 2,000 requests, which averages \$3 per request and does not reflect the true cost of the service involved.

It is our submission that this great degree of inequity—which it is when we have to expend over \$100,000 to maintain this office—should be addressed by achieving a better balance between the cost of providing the information and recovery from the party requesting the information.

Prior to my asking Inspector Turnbull to speak, I would like to address the one reason most often given against increasing costs to requesters for information. It is argued



that quasi-governmental agencies should be open and accessible in their deliberation, as it is those decisions that affect the populace that these bodies represent, and that these should not be made in private or unreasonably withheld from scrutiny.

In the Police Services Act, there is provision made with respect to actions and decisions of the board, and there is a very narrow exception as to what matters may be considered in-camera by the board and what matters must be dealt with in public. The great majority of items to be discussed by the board are to be on the regular agenda and not to be held in-camera. We had instituted such a policy, actually, even before the Police Services Act was put forward in the form of a bill, and we are presently also revising our policy in that respect to fine-tune it.

We think that because of the nature of that act with respect to police services, there is greater access by the public to the board than there was in the past, and policy interests can be served through access directly to the board.

Other requests for information generally fall within the category of requests for personal information or information that is pertinent only to the applicant. We think, in that respect, that the cost could be borne a little bit more by the applicant. We have had, actually, one request recently by a convicted murderer for information that could only be pertinent to this person, and we find, unavoidably, that the cost of servicing this request has been borne by all the taxpayers in the region. We know, in respect to smaller police services and municipalities, that they are facing the same problem, and with respect to some of the police services, the cost of providing information may turn out to be overwhelming in some cases. There is a well-known incident that I think the committee would be aware of, involving a request from Penetanguishene that is completely overburdening one of the smaller forces.

So that, in a nutshell, is our concern. I would ask Inspector Turnbull to address certain specific recommendations that we would make.

**Mr Turnbull:** Good afternoon, ladies and gentlemen. I am the information and privacy co-ordinator for the Peel Regional Police. I have also been the chairman of the Ontario Association of Chiefs of Police freedom of information subcommittee for the past two years, and a member of the subcommittee since 1988.

The Peel Regional Police has established a three-person bureau to handle access requests and appeals and to ensure compliance with the Municipal Freedom of Information and Protection of Privacy Act. So far this year we have handled 46 access requests, of which 28 have been for the personal information of the requester. We have also informally resolved two appeals with the Information and Privacy Commissioner's mediators. As you heard previously, we have only been able to collect \$38.80 in fees. Incidentally, that is not quite correct. We have charged somebody \$38.80 in fees. We expect to collect it, but they could apply for a waiver.

My comments to you today are made after having gained some experience working with the legislation, although certainly not as much as my counterparts in the provincial ministries. As Mr Obradovich stated, I will be recommending

specific changes to the legislation with respect to the charging of fees that would be relevant to all institutions provincially and municipally and to several concerns that are rather specific to police.

With respect to the charging of fees, I would like to point out that a mechanism is in place within the legislation that requires the head of an institution to waive the payment of fees under certain circumstances where it is fair and equitable to do so. Several circumstances are outlined in the act. These include financial hardship for the requester, whether disclosure will benefit the public health or safety, or any other matter prescribed in the regulations. As you can see, anything can be determined as a reason for waiver. As well, if a requester is denied a waiver of fees by the head, the requester may appeal this decision to the Information and Privacy Commissioner.

This brings me to my recommendations concerning fees.

Recommendation 1: that the legislation be amended to permit the charging of fees for responding to any access request. The fee structure as it is currently set up precludes us from charging individuals who want to access their own personal information. This should be changed, in my view. Individuals who want to obtain copies of records that contain information about themselves should have to pay all reasonable costs associated with fulfilling their requests. By submitting an access request under this legislation, they are utilizing and mobilizing public resources for their own private needs. The general public, in my view, should not have to foot this bill.

Recommendation 2: that the legislation be amended to permit charging a fee for all manual search time. Currently the first two hours of search time for general records is free. Why? Why should anyone expect anything for free? Of 27 access requests in the first six months of this year, we had 18 for personal information—no charge for anything. Of the remaining nine, in only two cases was the search time in excess of two hours. One of these was withdrawn by the requester and the other was due to improper storage within our organization, so we waived the fee. In 22 of 27 cases, the information was located in less than 60 minutes. That pretty well negates charging for search time in our organization.

Recommendation 3: that the legislation be amended to permit the charging of fees for all reasonable costs for preparing the record for disclosure. In former commissioner Linden's order 4, in relation to the Municipal Freedom of Information and Protection of Privacy Act, he ruled without any explanation that no fee should be charged for the time spent reviewing a record to determine what portions can be released. This is the most onerous and time-consuming task in the whole process. Due to the nature of law enforcement records and the possible consequences of an inappropriate disclosure, we have two people review all records. This takes a considerable amount of time. We have been fortunate in our organization so far that our largest access request has only involved 597 pages. Other police services have not been so fortunate. One recently dealt with a request that involved 11 banker's boxes of documents, and another had a request for all records pertaining to a homicide investigation. These records filled two complete vans.



Recommendation 4: that the regulation establishing the fee structure be amended to provide for annual fee adjustments. This is simply needed to protect institutions from the effects of inflation and to ensure that fees, when charged, are meaningful.

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Recommendation 5: that the legislation be amended to provide institutions with protection from frivolous or vexatious requests and those that abuse the right of access. We support Bill 120, which was introduced to the Legislature on June 6, 1991, by Mr McLean, the member for Simcoe East. We share his concern that presently individuals can flood provincial and municipal institutions with access requests. One inmate of a psychiatric hospital has submitted over 1,000 access requests to institutions, while others have repeatedly become nuisances. Without some protection in this area, institutions could be inundated with requests made for frivolous reasons. Where would we be if every crime victim submitted a request for his police occurrence report? How effective would we be at protecting the public if a number of people were to submit multiple access requests, causing us to divert our resources from other functions in order to comply with the 30-day time frame allowed for response?

The Quebec legislature saw fit to address this issue in An Act respecting Access to documents held by public bodies and the Protection of personal information. In section 126, it says:

"The commission may, on request, authorize a public body to disregard requests that are obviously improper because of their repetitious or systematic nature.

"The same rule applies if, in the opinion of the commission, the requests are made for purposes not in accordance with the objects of this act in respect of the protection of personal information."

Another way to offer some protection to institutions, at least against the idly curious and repetitious requester, would be to establish a deposit or application fee. This would be submitted along with the access request to cover the initial cost of the search and assembly and analysis of the records in order to determine a proper fee estimate.

At present, when an access request is submitted, the institution must gather the records, make a determination with respect to what portion may be released, or choose a representative sampling if it is a rather large record, and develop a cost estimate, which may then result in the requester withdrawing the request after all that work has been done. If the request is withdrawn, there is no remuneration for the resources already expended. If the waiver is granted, then no fee can be charged, and if the deposit is paid, it still does not represent anything close to the real costs associated with administering this legislation.

Under the federal Access to Information Act, a deposit is required to accompany the access request. I believe it is set at \$5, and section 11 of the legislation indicates that it is not to exceed \$25.

As I outlined at the beginning, a process for waiving fees is already contained in the legislation. If a deposit were to be required to accompany an access request, then I would see the waiver application becoming part of the

access request form, and if claimed, it would be the first issue to be addressed by the head.

To summarize, I am suggesting that the users of the legislation should expect to pay for the service they receive, no matter what information they are requesting; that a deposit should accompany the access request; and that in calculating the fee estimate, the institutions should be able to include all reasonable costs associated with handling the request, including all search and review time.

At this point I would like to repeat some specific concerns that police have with this legislation.

Recommendation 6: that the legislation be amended to remove the requirement that severability of a record be considered for certain law enforcement records and records where the disclosure could seriously threaten the safety or health of an individual.

The law enforcement exemptions I have listed deal with protecting the safety of individuals, ensuring their right to a fair trial, and revealing intelligence information. The concern with the severing process applying to these types of information is that it is a manual process and therefore is subject to human error. An error made in the release of certain types of information could have life-threatening consequences. No comfort should be taken from the fact that, to our knowledge, no such situation has yet occurred.

Recommendation 7: that the legislation be amended to exempt a law enforcement institution from the requirement to transfer an access request to another law enforcement institution and notify the requester of that transfer.

By transferring an access request and notifying the requester, we are telling the requester that the other institution possesses the record being sought. In my view this contradicts the intentions of subsection 14(3) of the FIPPA and subsection 8(3) of the municipal FIPPA, which are supposed to give law enforcement officials the option to refuse to confirm or deny the existence of a record to which a law enforcement exemption applies.

Recommendation 8: That the legislation require all staff at the Information and Privacy Commission to be security-cleared to the level of a police officer. This would require thorough background checks, fingerprint searches and name checks on each person employed there. Since law enforcement information is generally considered to be sensitive, it is natural that we consider intelligence information, drug information, and certain criminal investigations to be extra sensitive.

The potential for harm arising from an inadvertent or deliberate leak of these types of information is our concern. The more people who have access to information, the less secure the information becomes. If we must allow staff members from the Information and Privacy Commissioner's office access to law enforcement records, we should at least be able to ensure they do not have a criminal record or a connection to organized crime that would jeopardize the security of the information.

In conclusion, I suggest that in reviewing this legislation and all the recommendations that have been placed before this committee today and before today, you consider just what proportion of the population of this province is making



use of these acts and whether the costs associated with the use should be borne by all taxpayers or by those few users.

In addition, I encourage you to give consideration to the specific police concerns I have outlined, which are designed to reduce the risk of an information leak that could result in serious injury or death.

**Mr Owens:** I would like to thank you for your presentation. I have to state that you are the first group coming forward that has actually asked for fees to be put in place and/or increased. Most of the other presentations we have heard have found that the fees that have been suggested would be too onerous for people to continue the search and they have abandoned the search for information.

I hear what you are saying about the issue of the frivolous request coming from the Ministry of Correctional Services. This perhaps was part of residents' therapeutic programs to make requests through the freedom of information and privacy branch, and I guess we should consider all types of rehabilitation and therapy as being valid.

While there are provisions in the act with respect to waiving fees, in terms of a deposit, do you have any idea of the kind of numbers that you would be looking at? My main concern is that we, as taxpayers, already pay for police services to be provided and would be double-paying for that service if the kinds of fees you are suggesting were put in place. I would be concerned that for Joe Q. Public out there who wanted, for whatever reason, to see what kind of information the police had on him, it would act as a deterrent.

1630

**Mr Turnbull:** Mr Owens, at present there is a fee structure for certain kinds of law enforcement reports to be released. Normally we get requests from insurance companies for copies of police occurrence reports. We do not actually give them the law enforcement report that was put together at the time of the investigation. What we do is give them a synopsis of the facts. Really all they want to confirm is the fact that, yes, it was reported to the police and, yes, certain articles were reported as being lost or stolen. On that basis the insurance company will settle the claim.

I think the fee charged for that kind of document is about \$15. It seems odd to me that we might be expected to provide a far more in-depth report to the actual reporter, the individual who is the victim, at absolutely no cost. They are paying for the service through their tax dollars to have a police officer come and investigate a crime against them. They are not paying in the first place to get a copy of that report.

**Mr Owens:** In terms of the insurance companies, you make a good point that it should be part of the settlement, that if the insurance company requires the police report it should be a part of the premium I pay to the insurance company. That should not be an issue.

I am not quite sure who would be calling the police department to ask for information on themselves and what types of requests you would actually get. You mentioned two that sound like very peculiar cases where people have had maybe less than honourable intent in trying to obtain the information. What kinds of people are contacting you folks? What sort of information are they asking for?

**Mr Turnbull:** Most of the personal information requests come from either employees, former employees or criminals serving time. The access requests for general information have come from members of the community who have been interested in particular statistical information. One that readily comes to mind was somebody who wanted all the salary scales for every employee in the region of Peel, the city of Brampton, the Peel Regional Police, the school boards and everything. We do not know why. We thought perhaps it was in preparation for the upcoming elections that this information was thought to be valid, but we provided that without too much problem.

**Mr Frankford:** Could you say a bit more about statistical and aggregates data? What can one reasonably expect and how much work is involved for you?

**Mr Turnbull:** Are you asking me what the average size of an access request is? The number of access requests do not mean a thing.

**Mr Frankford:** I will be more specific. Presumably one of the things of considerable interest around police activity is crime statistics. Could I go to you and get them or could other members of the public, and how much work is involved?

**Mr Turnbull:** Crime statistics are produced annually and are readily available to the public. They are submitted to the police services board in the form of a formal statistical report and they are reported in the media at great length.

**Mr Frankford:** If someone wanted to be more specific and say, "Okay, give me this particular type of crime in these apartment buildings"—

**Mr Obradovich:** I will give you an example of something that does not quite parallel that. As well as the annual report on crime, statistics that are produced for the purposes of Statistics Canada, we have our own internal statistical survey which we call status line and which in fact is filed at every regular monthly meeting on the board agenda and is available to the public. It breaks down the incidents in the region and by division according to category, whether it is an assault or bodily harm or sexual assault, and also motor vehicle offences and all that. That is run off the computer and is readily available.

One of our members inquired two months ago concerning incidents of violence in the school system. In our region we police schools a little bit differently in each division and there is a different method using school days and officers. We were interested to know what effect that program had on incidents. So we asked for a breakdown of the incidents by area according to the time prior to the introduction of the school liaison program and afterwards. In some instances that information could not be extracted. We were able to get the incidents according to the schools themselves, on-site, for the whole region globally. It required two days to produce 38 incidents, and it required someone to work two days full-time on that. That gives you an idea of the scope of time that would be required.

**Mr Frankford:** And the request was from an interested citizen?

**Mr Obradovich:** No. It was from ourselves, from the board. We had been looking at the issue of violence in the



schools to determine the extent of the problem and what resources we should commit to that. Even on our own initiative that is the length of time it took.

**Mr Frankford:** Under present legislation an interested citizen would have the right to do the same thing.

**Mr Obradovich:** That is right. We would then have to commit an officer to work on this for two days when we are being pressed in other areas.

**Mr McClelland:** It is good to have you here from Peel. I would not want you to think, since I am known to drive my sports car a little too fast from time to time, that I am trying to flatter anybody from the Peel Regional Police.

Inspector Turnbull, on a very serious note, you raised two points that I would like to ask you to expand on somewhat. They are contained on pages 5 and 6 of your brief, recommendations 6 and 7. With respect to recommendation 6 and your concluding remarks that appear at the top of page 6, I think I would like to qualify them somewhat. I think it is a recommendation that this committee needs to look at very seriously.

I would like to remind each of us that the member for Carleton, Mr Sterling, a member of the Progressive Conservative Party, submitted evidence from the United States that indicated there were individuals who had, quite literally, used freedom of information legislation that somewhat parallels in many respects our legislation, to obtain information that subsequently resulted in—if I can use the vernacular—hits on individuals. Information was obtained and the contracts were put out for the murder of individuals whose names were obtained as informants and sources for police information. So I remind us of that. It is a very serious matter that has to be considered and not looked at lightly. I will leave that for comment if you wish. You may not want to comment any further but I just remind us of that.

Recommendation 7: I would like you to help me with that a little bit. I was not aware of the implications in terms of the apparent conflict that you set out here. Can you just give some meat to that to help us with the difficulties it presents to you as a law enforcement agency in working with other agencies in, I would imagine, such things as criminal investigation units particularly?

**Mr Turnbull:** Sure. The act requires that if someone submits an access request to our institution for records that we readily identify as belonging to the OPP, for example, or Metropolitan Toronto Police, we forward the access request to that institution and notify the requester that we have done so.

The difficulty I have with that is that by doing so we are telling the requester that the police force has in fact got the records that deal with you. The people who put this legislation together for very good reasons felt that law enforcement agencies should have the right to refuse to confirm or deny the existence of the record at all, if the entire record would fall under the law enforcement exemption. We feel that subsections 25(1) and 18(2) of the two acts contradict the purpose of the other subsection.

How can I elaborate on that? I suppose what we could do is deny that we know that the records are in fact Metro Toronto's and send the request back, but that is certainly

not responding within the spirit of the legislation as it has been written. We, in law enforcement, I think have bent over backwards to embrace this legislation as best we can and to deal with it in an upfront manner. Police officers are like that.

1640

**Mr McClelland:** In your professional opinion, with your experience on the police force, does that potentially from time to time compromise investigations that are under way?

**Mr Turnbull:** It certainly could if there were investigations ongoing which would be brought to the attention of the requester.

**Mr McClelland:** In a case like that, is there no provision that you can sever that information and say there is nothing available at present? In so doing, are you tipping your hand, so to speak, in saying there is nothing available?

**Mr Turnbull:** We cannot sever what is not ours.

**Mr McClelland:** So it is a catch-22 you are in with that specific situation.

**Mr Turnbull:** Yes.

**Mr McClelland:** I want to ask one other question. I think it might more appropriately go to Mr Obradovich, the chair. We have known each other for some time, Miles. We chat from time to time, and I know of your involvement in the community. I am going to put a question to you that I would like some assistance on and I think my colleagues would as well.

I understand the difficulty police forces have in conducting investigations and the need to have strict control on their own investigations at times. I would like you to respond, because you, as chairman, represent the community and one of the—I am not saying this in a patronizing sense—more progressive police forces in the province. It is about balancing the need to have an investigation and to have unfettered rights, if you will, of the police officer to do his or her job as best he or she can, with the right to know. There are classic examples and very compelling cases where law enforcement agencies have refused to let information be known to members of the media, and I use that in the generic sense of the right to know.

I ask you, as chair of the police services board in Peel, what your reflection is on the right of the citizens to know, for example in the cases which have been brought to the attention of our friend from Mississauga South, cases with respect to serial rapists. There is the risk to women in particular communities and neighbourhoods when that happens, and which must be balanced against what the police officers say: "We can't let that information out; it's going to jeopardize our investigation." That example is perhaps among the more compelling anyone could give of the right of women in a given community or neighbourhood to know there is a problem and to take extra precautions. How do you respond to that? It is a dilemma. I do not think any of us has the wisdom of Solomon and we would like your assistance on that. Indeed, that is your job too, bridging the community and police in Peel.



**Mr Obradovich:** I think that is the responsibility of the police service, to ensure that the public is aware of those matters that affect their safety. We know there was a case recently that arose because of the action of the Toronto police force, which has resulted in a suit being permitted to go forward against Metropolitan Toronto regarding the failure of that force to provide information to a certain neighbourhood about criminal activity that resulted in a rape.

We recently had an incident in Mississauga where a lady was murdered, and our chief of police went down to the apartment building and addressed all the residents of the neighbourhood on the issue and advised them about certain facts that would be important to them.

I think that responsibility is in some ways best discharged by the service according to local needs, as opposed to their being told to react in a certain way automatically; and the onus should not be on each citizen to apply to the service for information, because you would have 250 requests all to be filled at the same time.

Our concern is in a lot of respects with the frivolous requests. You could have, for example, an author who wants research material and can submit requests that would take half a year to fulfil so that he could complete his work. According to the act, if there are no exemptions for the information sought, it would have to be provided.

You have to remember that police services are allowed so many personnel. We submit a budget requisition, and based on that budget requisition we have so many people. We have to fulfil that request with the resources we have, which means we have to take personnel away from some other task or activity to service that. We do not have the option of going out halfway through the year and adding an extra body over and above our complement. I think that is where the concern of the public would be greatest, the impact that may have. In Peel we may be able to adjust. We have been fortunate enough to have not yet been hit with the big request, but it is a problem that can impact on the smaller force quite radically.

**Mr McClelland:** I appreciate that, but I see a real problem that still has to be addressed with some sort of protocol or some direction from the provincial government. I will state it very plainly. We have a good police chief. We have Chief Lunney, who is a very competent, able man. Whatever man or woman succeeds him I trust will be equally competent. He or she may or may not be, may or may not exercise the same kind of judgement. You, sir, and your colleagues on the board do a good job. That may not always be the case.

That is the problem. I am not taking issue with the conduct of the Peel Regional Police force; I am talking about something that really has to be addressed by this committee and police forces across the province, because surely it is not sufficient to say that we leave it to the good judgement of the chief of police, whoever he or she is, or the policy as established by the local police services board. The right of the citizens to know, in given situations and oft-times through the vehicle of the local media, surely must remain in place.

It is easy to sit back and say what needs to be done. I do not know where that balance is, but I think that is

fundamental for those of us who are charged with the responsibility of dealing with this legislation to ensure that it happens, at the same time doing it in a way that does not erode the integrity of the operation of police, which is equally important for the wellbeing of the citizens of this province.

**Mr Obradovich:** Okay, right on that point, I would submit that where you are dealing with items of a timely operational nature, which the public needs to know in a timely way, and not waiting while certain requests are filtered through because they impact immediately, and you are concerned about inconsistency of application or approach by different police services across the province, in that case the problem is better cured by directives issued by the Solicitor General's office and the Ontario Police Commission on those points, as opposed to asking this act, which is really struck for some other purpose, to fulfil those needs. It will not work well if you want to protect those people who need to know what is going on in their community in a timely way about ongoing criminal activity. This deals more with historical situations.

**Mr McClelland:** We have had 10 months now at the municipal level in the application of the act. Are you satisfied, as chairman of the Peel police services board, that there is some consistency in terms of application? Has direction been forthcoming from the Solicitor General's office that is sufficient for police? I will not talk about police forces across the province, because you cannot comment on that. Are you satisfied with the direction that has come out of the Solicitor General's office to assist Peel Regional Police to deal with how they respond to requests for information from either citizens and/or the media? Has that direction been forthcoming?

**Mr Obradovich:** Not to my knowledge. I know we have had direction on release of information relating to police pursuits and there have been directions regarding the retention of information and the use of weaponry, but there has not been any, to my knowledge—Inspector Turnbull may know more—regarding release of information to the public about ongoing criminal investigations that may impact on the public.

1650

**Mr Turnbull:** To answer your question, sir, there has been no leadership provided by the Solicitor General's office on that particular point as a sort of stand-alone direction. What has occurred is that the Solicitor General's office has provided the Ontario Association of Chiefs of Police freedom of information subcommittee with two advisers, one from the Solicitor General's FOI office and one from the policing services division, who have worked with us to develop a consistent police response to this legislation across the province. These people have been with us since the very beginning and have been of tremendous help in training police officers and police services board members across the province.

Members of our committee and those advisers also participated with Management Board and the Information and Privacy Commissioner's office to develop guidelines for police services on the release of information to the media or to anybody. Those guidelines are in writing and



were distributed province-wide through the policing services division to all police forces. Some forces may have looked at those guidelines and chosen to go off on a little bit of a tangent from them; that was their decision to make, but the guidelines were distributed through the policing services division.

**Mr Owens:** I appreciate Mr McClelland raising the issue with respect to the release of information. It is an issue that I have struggled with in terms of the need to know versus the potential compromising of an ongoing investigation. I am not all that comfortable with leaving it up to local services to provide the information. I am wondering if you have any thoughts around perhaps defining through regulation some guidelines as to when information could be released to the media. For instance, I do not think my neighbourhood needs to know that there is an ongoing drug investigation happening, but I think they would probably want to know if there was a serial rapist on the loose. Coming from Scarborough, we already have that situation and that person has yet to be apprehended. Would that perhaps be a way of getting around that? It is a sticky problem, there is no doubt about it.

**Mr Turnbull:** We are talking about two different things. On the one hand, you seem to be talking about personal information. You know, should we be saying to people in the community that we are investigating the family that lives in that house, or should we be saying to the community, "We're looking for a suspected rapist described as male, white, five foot 10 inches, 180 pounds, with long, dirty hair, and here is a composite drawing of what we think he looks like"? They are two totally different things.

I think the act makes it very clear—I only have the municipal version with me—in subsection 5(1) that there is an obligation to disclose information to the public where there are reasonable and probable grounds that it is in the public interest to do so or where the record would reveal a grave environmental, health or safety hazard to the public. Certainly if we identify that there is a serial rapist on the loose and we make the connection that the crimes are in fact connected, then there is an obligation under that section of this legislation, in my view, to identify that situation to the public. If it compromises the investigation and lowers our chances of apprehending the individual, then so be it. On the other hand, it may very well protect some other individuals from becoming victims.

**Mr Obradovich:** That is one of the overriding purposes of the Police Services Act, the prevention of crime. It is really within the purview of the Solicitor General's office to set policing standards in the province and it is through that act there exists a mechanism for enforcement of those standards.

**Mr Owens:** Just a quick question to Mr Frank White: In terms of the current security requirements, are there any? What are they?

**Mr White:** Perhaps I could answer that after the minister makes his remarks following this presentation.

**The Chair:** Thank you. I do not think there are any further questions. I have a brief one, if I can take the intelligence of the committee for a minute. In your brief

you made a reference to requiring a deposit. Are you aware of regulation 7, section 1, which basically reads that if the head gives a person an estimate of an amount payable under the act and that the estimate is \$24 or more, the head may require that person to pay a deposit equal to 50% of the estimate before completing the request? Have you ever applied that regulation?

**Mr Turnbull:** Yes, sir. I am aware of that and I alluded to it in the brief, that the particular deposit, if you will, comes after we have done all the preliminary work to gather the record together, to analyse the record and determine what portion of it would be released to the requester.

**The Chair:** You would like to see that applied before rather than after.

**Mr Turnbull:** Yes, I think the whole issue here is that a requester should submit a deposit with his request upfront. If he feels he is justified in receiving a waiver of deposit, then he should indicate that at the very outset. Before we even gather any records, we should determine whether or not the person qualifies for a waiver, and if we say he does not and he thinks he does, he can appeal that decision to the commissioner, and we will not even have even looked for any records yet. We have not expended any manpower hours, except that someone familiar with the legislation makes that determination.

**The Chair:** Thank you, gentlemen, for coming along here this afternoon. We extended your period quite a bit. We had some free time. There were some very interesting and very important questions that committee members asked, and we will take them into consideration.

We could have a five-minute recess.

The committee recessed at 1700.

1707

#### MANAGEMENT BOARD OF CABINET

**The Chair:** At this point I would like to welcome the Chairman of Management Board, the Honourable Tony Silipo. I understand we have scheduled you in for an hour. The members would appreciate it if you left time for some questions to be asked.

**Hon Mr Silipo:** I think I will, Mr Chair. Let me say that it is nice to be here and to be back in a committee room. With me is Frank White, director of our freedom of information and privacy branch at Management Board, and Priscilla Platt, a legal adviser in the branch. I want to thank you for inviting me this afternoon to appear before you as a participant in your meetings to hear the public's representations and views about Ontario's access and privacy legislation.

I know you have heard from many diverse associations and individuals in the hearings you have held to date, and as a result I think you are well placed as a committee to assess what changes to the legislation might be needed to put its principles to better effect. As members of government we look forward to your recommendations, and I can tell you very clearly they will be an important guide to possible amendments we will be contemplating.

Because it is your committee's role to assess what changes could be made to the Ontario Freedom of Information



and Protection of Privacy Act and recommend amendments to the legislation and to the Legislature, this afternoon I will offer some brief comments on how the legislation is working. I will also try to identify some issues I hope the committee will address in its recommendations.

First, a couple of words about some of the positive effects of the act. I know you recently heard a representation from the Ontario division of the Canadian Bar Association. I gather the association's assessment is that in general the legislation is working well and that no major amendments are required. You have also heard the Information and Privacy Commissioner express similar views when he appeared before this committee, although I also note that he did make a number of suggestions for amendments.

Between the time the provincial act came into force on January 1, 1988, until the end of June this year, over 22,000 access requests were received. This includes requests for general records of government and requests by individuals for their own personal information. Ministries and well over 200 provincial agencies were required to provide access to information in their records or justify any refusal to provide access to records under the limited and specific exemptions of the act.

Most of these requests resulted in requesters gaining access to records. Approximately 50% of the requests resulted in the full disclosure of records. An additional 21% of the requests resulted in partial disclosure. Some requests were withdrawn or abandoned, often because institutions could provide information to satisfy the requester outside the formal process of the act. In 8% of the requests, a record of information did not exist. Most requests were responded to promptly. Approximately 75% of requests were completed within 30 days.

These figures, I think, show that the act has created a significant level of access and has opened many government records to the public that may not have been available in the past. Ministries and provincial agencies continue to adapt to the requirements of the act. Each ministry and agency has designated an individual to act as its freedom of information and privacy co-ordinator. This individual plays a key role in helping the public to gain access to records and ensuring that the ministry or agency is safeguarding the privacy of personal information.

Our priority at the Management Board secretariat is to make sure the co-ordinators have information and the interpretation of the act they need to do an effective job. Unlike the access provision of the act, its privacy provisions cannot be measured by statistics. I understand, however, that the provisions of the act have resulted in changes to practices of ministries and agencies and have enhanced the protection of privacy of individuals affected by government programs.

In response to the act, ministries and agencies have reviewed what personal information they collect and how they collect it. They must meet the act's requirement about the use of personal information, and cannot disclose personal information except as the act allows. Ministries and agencies have been very active in seeking advice from Management Board concerning the privacy requirements of the act.

In my description of the positive effects of the act, I must mention the work of the Information and Privacy Commissioner of Ontario. Tom Wright and the former commissioner, Sidney Linden, have resolved many appeals under the legislation, both by mediation and formal orders. Over 250 orders have established a clear interpretation of many access provisions of the act.

The commissioner has reviewed ministry and agency interpretations of the exemptions to access. In many instances his orders have narrowed the interpretation of the exemptions so that records initially withheld by institutions were required to be released. These orders in turn result in the release of records by ministries and agencies in similar circumstances. Staff of the Management Board secretariat communicate commissioners' decisions to all ministries and agencies to promote a consistent interpretation of the legislation's provision.

For all these reasons I believe Ontario's access and privacy legislation is working and has made a positive difference for many individuals and groups in Ontario. That is not in any way to indicate that the legislation cannot be improved. In fact, I believe the legislation can be improved. You have heard many representations from the public recommending changes to both the provincial and municipal legislation. I cannot comment on all these recommendations. I believe it is your committee's role to assess this information and provide to the Legislature, and therefore indirectly to me, your views on what you have heard and perhaps what you have not heard. I would like to point to seven issues. My purpose in doing that is to ask the committee to weigh the representations it heard and, if possible, to come forward with specific recommendations in each of these areas.

First and most important, I would be very interested in any proposals you make to narrow the present exemptions in the access provisions to the legislation. The principle of the legislation is to make these exemptions as limited and as specific as possible. I would welcome and consider carefully any proposed amendments to make exemptions more limited or more specific.

Second, I hope the committee will provide recommendations concerning the proposal of the Information and Privacy Commissioner of Ontario to amend the act to include certain specific powers of the commissioner. He has asked for clarification of his powers to audit privacy practices of institutions, including powers to enter premises and compel them to release documents to conduct an investigation. He has also asked for authority to order an institution to cease a use, disclosure or retention practice concerning personal information where an institution's practice contravenes the act. I would urge the committee to reflect carefully on his proposals.

The commissioner has also suggested that a task force be established to review computer matching of personal information by ministries and provincial agencies. I would be very interested in your comments on this proposal.

Third, I would welcome your recommendations concerning the present balance in the legislation between access to personal information and the protection of privacy. Earlier this year, as the Municipal Freedom of Information and



Protection of Privacy Act came into force, you heard about issues relating to access to personal information of victims of crime. Recently the committee heard concerns about municipal access to social assistance files. You may wish to address the appropriate balance between access and privacy in the act. I would welcome your comments in this area.

Fourth, you have heard, from several historical researchers, of considerable delays and frustrations in gaining access to historical records in the Archives of Ontario. It was certainly not the intent of the act to stop or hinder research that helps us to understand our social and political heritage. The legislation should accommodate the legitimate goals of historical research. There may still be concerns, however, about protecting the privacy of individuals whose information is in the very recent historical record. Because amendments may be needed to achieve a better balance, I would welcome your recommendations about access to records in the Archives of Ontario.

Fifth, you have heard from various users of the legislation that the fees for permits should be reduced or that certain users such as the media should be exempt from fees.

Although you have not heard from ministries or agencies about fees, I can assure you that the permitted fees do not cover the full cost of complying with requests. For example, in the first six months of this year, ministries and provincial agencies collected fees of approximately \$43,000. The legislation does not permit fees to be charged to individuals for access to their records of personal information. Also, the first two hours of search time for a general record are without charge to the requester.

The legislation's purpose is to provide access, but the legislation recognizes that access requests for general records should not unreasonably interfere with the operations of ministries, agencies and local governments.

If the information obtained is used for a commercial purpose, should the requester bear the costs related to the request or should these costs be subsidized by the taxpayer? I would be very interested in your recommendations concerning fees. I note that in the presentation you had just before me you were dealing with that issue as well.

Sixth, you have heard that not all agencies of the provincial government are subject to the Freedom of Information and Protection of Privacy Act. While the great majority of agencies are included, some are not covered. My staff provided a list of these agencies on a previous occasion, I understand. I would welcome your recommendations concerning whether all agencies of the provincial government should be included, and I note on that point that that is something to which change could be made by regulation as opposed to legislation. For that reason also I welcome your comments on that area.

Last, I would ask you to address an important recommendation raised by a number of municipalities in their written submissions to you. Municipalities and the institutions have asked for a means to refuse to respond to frivolous or vexatious requests. At present, the legislation creates a right of access to records held by institutions, and institutions can only refuse access if an exemption applies. There is no lawful way for an institution to refuse to process a request by a requester who may be trying to hamper

the institution. In other contexts, there are lawful means to address this problem.

For example, there is a means under the Courts of Justice Act to prevent frivolous or vexatious litigation, and both the Ombudsman and the human rights commissioner can refuse to deal with complaints that are deemed to be frivolous or vexatious. Such provisions are rarely used because they seriously impede rights and because courts and tribunals are reluctant on such a subjective test to make the determination that a suit or complaint should not proceed at all. Such provisions are meant only for the most extreme circumstances.

Some extreme circumstances do exist now in Ontario, it seems to me. One requester has submitted many hundreds of access requests to municipalities requesting large volumes of records. Municipalities must provide two hours of free search time for records for each request. Even where fees may be charged, it is time-consuming for municipalities to prepare fee estimates. It is obvious from looking at the requests that they are being used to hamper the operations of these local governments.

This situation is extremely costly to the taxpayers of Ontario, and I would be interested in your views on how to address the issue of requests that are clearly inconsistent with the purposes of the act and are intended to hamper the operation of institutions subject to the legislation.

In conclusion, let me say that all governments in Ontario face challenges when it comes to earning the respect and trust of Canadians. One of the ways the integrity of the Ontario government will be measured, I think, is by our relations with the people we serve. Openness in government will ensure integrity of government. One of the best ways to open up government is to ensure that our freedom and privacy acts are working the way they were intended to.

**Mr H. O'Neil:** Some of the delegations we had were from the press saying that they do not feel there is enough leeway in some of the information they are asking for from some of the police forces and some of their agencies. I wonder if you would like to comment on that.

**Hon Mr Silipo:** I will comment in a very general way. Again, it is a question of looking at how we can fine-tune the balance we have to strike between, in this case, the media having access legitimately to information and the protection of individuals, particularly in young people.

The clearer we can make the rules the better. I know part of that issue is also the concern whether the withholding of information is being done, or the perception that the withholding of information is being done, not so much because the act states it that way, but because, in fact, people are choosing to interpret provisions of the act in a particular way perhaps for other reasons.

I am not saying I believe that or that I agree with that perspective, but certainly the perception is there. I think the clearer we can make the ground rules the better, and I would welcome your comments as a committee in that area.

1720

**Mr H. O'Neil:** Is it your feeling and your staff's feeling that the rules, as they are currently set up, cover that sufficiently, that the safeguards are there?



**Hon Mr Silipo:** I am going to ask Frank White to comment further on that.

**Mr White:** I think there are criteria that one can assess whether information is going to be disclosed in the act. A lot of the time there is the question of judgement when a person is making that decision. As the previous presenters discussed, there were guidelines developed, for instance, that go through the act so that one could determine when personal information about a victim might be released to the media.

The information is all there if you want to go through it. I would hope it is clear but, again, it takes an exercise of judgement in many cases, because you are reading words on a piece of paper and you have to say, "Is this a situation where, for instance, it would harm someone's safety?" That is judgemental. You have to look at the information and come to some kind of conclusion on your part whether release of that information would result in a harmful situation.

**Mr H. O'Neil:** With the guidelines you feel are there and the process that we are presently going through, you feel that those safeguards are there?

**Mr White:** Yes, I think the information is there. I also think though, and I think the minister said, that if the committee feels from what it has heard that there are places where it could be made clearer, certainly the minister would welcome that. For instance, if you are dealing with information about a victim—I think that was an essential part of the media's representations—the release at all times of information about victims and witnesses to the press is something they are interested in.

**Mr H. O'Neil:** I wonder if you would also touch on the cost, as was mentioned by some of the presenters this afternoon, of people putting in so many applications. I have to agree with that too. Are you saying that there is a process or an appeal basis there if somebody is turned down, or can they actually be turned down now?

**Hon Mr Silipo:** My understanding, and I would ask Mr White to correct me if I am wrong, is that it is very difficult, I think it is impossible actually, for people—

**Mr H. O'Neil:** To turn somebody down?

**Hon Mr Silipo:** —to be turned down unless one of the exemptions applies. You can very easily have the situation where people are making hundreds of requests at whim and institutions are required to reply to those requests.

**Mr H. O'Neil:** It is likely something this committee will have to deal with in some of the recommendations that we make, but it is also a very difficult area. Certain accusations can be made and we may have to rely on some of your staff to make some suggestions as to how we can best formulate what we have to do, so that we are preventing some of these frivolous applications. Yet we have to be very careful that when people feel they have a very good reason to ask they are not turned down either.

**Hon Mr Silipo:** That is the terrific balance we have to try to find. I agree with you that, in order to deal with what we term vexatious requests, we do not want to put in a rule that is so rigid it would in fact prevent legitimate requests from being made.

**Mr Owens:** I appreciate your taking the time today to come down and speak with us. I think your presentation raises a number of points this committee has been concerned about during the process. Mr O'Neil just raised the point with respect to frivolous requests and where one should look at drawing the line so as not to hamper the rights of an individual but, on the other hand, not to encumber the institution or the facility with such a workload that it would be impossible to get on with the regular conduct of business.

The issue with respect to computer matching, I think, is an excellent issue that we need to pursue. One of the concerns I developed as we went through these hearings was the incredible lack of protection of privacy for individuals with respect to their personal information, whether it be in the records that the government holds or perhaps, more importantly, in the private sector. Understanding that FIPPA does not extend to the private sector, I think we need to start looking at developing protection for that information in the private sector.

A couple of presenters have talked about the reporting of communicable diseases to emergency services personnel. I am wondering if you have had any thoughts about that or discussions with some of your colleagues in cabinet as to how we can get around what I think can be a reasonable request, but also protect the dignity and the human rights of both parties who are involved in this situation.

**Hon Mr Silipo:** I do not have a specific answer for you, although I will again invite my staff to comment in addition to what I am going to say. As I indicated, it is an area that we are very concerned about and I can tell you that even outside the review of this legislation it is something that we are looking at, because clearly, as government, we have at our disposal a great deal of information about individuals.

As we expand our ability to retain and transfer that information, one of the issues that we need to be concerned about, I think, is how people can have access to that information and how we can indeed ensure that we protect individuals' privacy. As I said, that will be there as an issue of some importance to us in reviewing this legislation. I do not have a more specific comment than that in terms of your question except to say that it is an issue that we know we need to address.

**Mr Owens:** In terms of probably another unfair question, a presenter came forward to us on two occasions to discuss a fairly horrific situation that took place in her family. The upshot was that she was initially unable to get copies of records from the children's aid society. When she was able to obtain a sanitized version of the records, it turned out that there were inaccuracies in the records and there also was information that would have perhaps proven helpful to this parent to have knowledge of.

She made recommendation to a task force of persons outside the social services to take a look at the state of social service records as they exist now, to make comment on the standards of practice with respect to recordkeeping and, further to that, perhaps some kind of a panel at the end of this review period to take a look at how we can in



some situations make records available to parents and/or children who are wards of the children's aid society. I am wondering if you have any comment on that.

**Hon Mr Silipo:** My general attitude is that people should have access to information that is being kept about them, and I say that in a general way because there may very well be some legitimate exceptions to that. That would be, I think, my approach to that issue. The kind of suggestions you are making would be useful and worthwhile avenues for us to explore and perhaps for you, as a committee, to explore as you put together your report.

**Mr Owens:** Mr White was going to answer my question around the types of security clearances that are required for staff coming on board with the FIPPA folks.

**Mr White:** I believe actually that the individual from Peel was talking about the Information and Privacy Commissioner's office, and I am not sure if they even take an oath. There may be some oath of office they take, but I do not believe there are any general security measures taken that would be different than any public servant. I know there have been some discussions with the Information and Privacy Commissioner and the Ontario Association of Chiefs of Police to see if they could resolve that situation.

1730

**Mr Frankford:** I want to ask you about a couple of things that came up last week with the Ontario Cancer Registry. First, I asked whether I could check whether I was registered there, which I should be, and they said no, I cannot check. Second, talking about using that information, they also said that, doing studies on it, they really act as gatekeepers. So you have to show that you are a bona fide researcher, that you have a legitimate medical project, to do it. They can approve or disapprove of your getting there. I guess I would just like to make you aware of that, and I think there is some inconsistency with some of the other approaches you mentioned.

**Hon Mr Silipo:** I understand the registry is not covered by the act, so that may be one of the issues that needs to be addressed both by you and by us in reviewing the legislation. In the example you have given, obviously there is a legal answer to that, but if the registry is not covered by the legislation, then the question is just whether it should. My tendency would be to take a look at that and say perhaps it should be.

**Mr McClelland:** Minister, there are a couple of things I would like to run through very quickly. At the outset of the enforcement of the municipal conflict of interest and protection of privacy legislation, there was considerable controversy, as you will be well aware, about the issue that has been raised in terms of disclosure of information by police forces. I think my colleague Mr O'Neil touched on it.

Quite frankly, at that point there was very clearly a little political controversy too. The then Solicitor General said, "Well, after all, I'm just subject, as my police forces are subject, to the provisions of the act which fall under the purview of my colleague, the Chairman of Management Board." At the same time, there was an obvious need for real direction from the Solicitor General's office to assist police forces.

One thing I am going to ask is that at some point in time, when this committee meets, we discuss very clearly who has clear responsibility for that. It seems to me, quite frankly, that in the current climate there is apparently no difficulty on a mass scale, although there are people in the media and the publishers' association and others who have been in touch with me from time to time and said, "Look, there are still problems out there in various locations," and they have a number of very compelling anecdotes to suggest that there is a problem there.

I would suggest with great respect that somebody is going to have to take leadership on this issue. I would ask that the committee come back with a recommendation that very clearly states that either it falls with you in your responsibility as Chairman of the Management Board of Cabinet or with the Solicitor General to provide some consistency from place to place across the province. That may or may not evoke a response from you.

Another thing I would like to touch on—I will just run these through and you may want to respond, Minister—is the issue of the parents' right to know when people who have not reached the age of majority are under the care and control of a person who has not reached the age of majority, and they are in their home. There is a real policy issue that needs to be addressed within the scope of the legislation in terms of the right of those young men and women, as individuals and as citizens of this province, as well as the right of parents who are ultimately responsible for the care of their children, and those children who remain under their care and control at home. That will be the second point.

The other one is really on the administration of the office. I would like to hear your comments on: (1) with the increased capacity or the increased demand for the services of the commissioner and the commissioner's office, are you considering having more than one individual, in other words a body of commissioners? And (2) which is I suppose somewhat related, although I think could be dealt with distinctly, have you considered and what is your view on the possibility of severing off, as the federal legislation has, the privacy office or the privacy portion of the act, which is from time to time quite clearly opposed to or in apparent conflict with the freedom provisions? Those are four things I would ask your comments on.

**Hon Mr Silipo:** Let me start with the last point and work my way back. In terms of the administration of the office, as far as I know there are not any plans to expand the staff of the commissioner, but I say that without knowing what discussions, if any, there are. That is clearly something we would have to look at if there is a sense that the workload is not being delivered properly or that it is too heavy, although it is clearly an issue for the government, as a whole, in everything else we do. That is a concern as we try to continue to do everything we need to do within the kind of fiscal problems we are all living with.

As for the question of severing the two aspects of the legislation, and therefore possibly having two commissioners to deal with those, that is something I really would be interested in hearing the committee's views on. I do not have a predetermined point of view on that. I will tell you what my concern would be. It would be whether in splitting



there might be more of a possibility for an inconsistency in approaches. That, I suppose, is something that could be addressed. It is something I would want to discuss in fair detail, clearly, because it would be a major departure from what we have now.

If the committee is interested in pursuing that avenue, I can say very clearly that I would look with great interest at the committee's views and ask the committee to consider whether the same objective may not again be served, however, with a higher degree of clarity with the guidelines. I would just ask you to take a look at both of those possibilities if you are contemplating that as a possible area for discussion.

As for the parents' right to know, that has to be one of the most sensitive areas in terms of trying to balance the parents' right. You did not specify, but I presume you were talking about young people who are perhaps just under the age of majority and at the point where they might wish that certain information not be available to parents.

**Mr McClelland:** Precisely. That is the kind of situation.

**Hon Mr Silipo:** It is a really difficult balancing act. I would probably come down on the side of saying that the parents do in fact have that right. But again, I do not have a fixed view on that and I would be interested in hearing what the committee has to say.

**Mr McClelland:** It would require some amendment, and that would need to be addressed fairly directly.

**Hon Mr Silipo:** Yes. On your first point about clarifying responsibilities, I think again it is a question, first of all, of trying to make the provisions of the legislation as clear as we can make them. I take your point that once the legislation is there, there has to be some clarity in terms of the day-to-day application of the legislation, the responsibilities that ministers have and how that overlaps with other responsibilities. Clearly the responsibilities for the legislation rest with Management Board, but obviously in terms of the specific example you gave, because it involved a police force, questions were directed to the Solicitor General.

I am not sure there is a clear-cut responsibility in that aspect of it that can be delineated, but I do think there may be some other things we can be doing in terms of looking at how we can consistently apply the legislation once we have hopefully developed it a little bit more clearly.

**Mr McClelland:** Those are some points, among others, I am sure, that will come forward, that I wanted to draw to your attention at this point from our party and certainly from myself. I want to thank you for welcoming our input and I look forward to being a part of that.

1740

**Mr H. O'Neil:** I would be interested in getting your views, and maybe Mr White's and the staff's, on a little something I have run into as a provincial member of Parliament. Just as one example, for years we have sent out letters of congratulations to students who are graduating from—it used to be grade 13—grade 12, or whatever it is now. The school boards are refusing to supply the names and addresses of those students under freedom of information. I am just wondering what your views on that would be, either in your capacity as minister or as an MPP.

**Hon Mr Silipo:** I remember this problem in a small way in my previous life. I hope we can find a way to rectify it. It seems to me that members of this Legislature should have access to that kind of information. By virtue of being elected, we hopefully passed at least some kind of test in terms of our ability to deal confidentially with that kind of information.

**Mr H. O'Neil:** Would you mind if I took the minutes from today and sent them out to my school board?

**Hon Mr Silipo:** For whatever my opinion is worth, Mr O'Neil—

**Mr H. O'Neil:** It is just a little point, sort of an aside.

**Hon Mr Silipo:** If it is of any help, I think school boards in that case apply those same rules to school trustees as well.

**Mr H. O'Neil:** They are changing that every year.

**Hon Mr Silipo:** Different approaches, I gather, have been used in different school boards on that.

**Mr H. O'Neil:** Did I get a clear answer then? You do not see any problem, or is that a definite maybe?

**Mr McClelland:** It is a definite maybe.

**Hon Mr Silipo:** Personally, I do not see any problems, but again, I think it is something we should take a—

**Mr H. O'Neil:** Can we get a ruling from the staff? At a later time I do not want you to disagree.

**Mr White:** I think if you want a ruling, you have to make a request, and if it was denied, go to the Information and Privacy Commissioner. One thing I might mention is that we do send out what is called "questions and answers" to municipalities and local boards, the common questions we get, so that we can try to get some consistency in the actions they are taking. Some examples like this have come up: for instance, putting pictures in the local newspaper of someone who has won an athletic event, where some boards unfortunately at the beginning were refusing to disclose the name of the student. We have given our advice that this would not be an invasion of anyone's privacy. They are representing the school publicly, and we obviously want to know who is representing the school. That information is going out to boards to try to get consistency in some of the privacy decisions they are making.

**Mr H. O'Neil:** I still do not have a clear answer.

**Hon Mr Silipo:** I am not sure we can give you a clear answer because I am not sure it is the kind of thing we can decide under the present legislation, to say you should be able to do this or not.

**Mr H. O'Neil:** So what do we do?

**Hon Mr Silipo:** We take a look at whether there is a way to get a different interpretation or indeed whether it is the kind of thing that might require some changes to the legislation.

**Mr H. O'Neil:** Can you put that on the list, Mr Chairman?

**Hon Mr Silipo:** You may not be able to do it for this year, Mr O'Neil, but maybe for next year.



**The Chair:** We will make sure that is on the list for consideration. I would like to thank the Chairman of Management Board for coming along here this afternoon and making the presentation. Certainly the seven areas you have indicated to us give this committee a lot of latitude to think about and deal with. I hope the committee will do that. Again, thank you for coming.

**Hon Mr Silipo:** Let me just say, as I have tried to indicate, that we are approaching this with a fairly open mind. On any of the issues we have touched upon, or indeed any others that we have not touched upon, I am certainly very interested in hearing from the committee and will take your report very seriously under consideration in drafting any amendments to the legislation.

**Mr H. O'Neil:** Just another point while the minister and the staff are here. Over the next few weeks we are going to be having another look at this, along with our staff. I

know the minister's staff have been in attendance here every time, but I think we are going to need a little bit of advice and a little bit of help. I just wondered if they would be part of those deliberations when we are looking at these different sections.

**Hon Mr Silipo:** They will be here with my full blessing if you want them.

**Mr H. O'Neil:** They have been very helpful.

**The Chair:** That concludes the public review of the Freedom of Information and Protection of Privacy Act, 1987. Starting next Wednesday we will begin our deliberations on putting together our report and recommendations to the Legislature. The committee stands adjourned until next Wednesday.

The committee adjourned at 1745.

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Document  
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M-23 1991

M-23 1991

ISSN 1180-436X

## Legislative Assembly of Ontario

First Session, 35th Parliament

## Assemblée législative de l'Ontario

Première session, 35<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 18 December 1991

# Journal des débats (Hansard)

Le mercredi 18 décembre 1991

## Standing committee on the Legislative Assembly

## Comité permanent de l'Assemblée législative

Chair: Noel Duignan  
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Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Wednesday 18 December 1991

The committee met at 1607 in room 151.

**The Chair:** Seeing a quorum present, I call the standing committee on the Legislative Assembly to order.

**Mr Owens:** I would like to welcome Doug Arnott back to Toronto, especially to our committee. I am sure you were well treated in Ottawa. However, I am sure it does not match the warm feelings we have for you here. Welcome back.

### PIN FOR MEMBERS

**The Chair:** Thank you, Mr Owens. Turning to the agenda before the committee this evening, the first item of business is a review of the pin for members. At this time I would ask Karyn Leonard, the director of the inter-parliamentary and public relations branch, to come forward. I understand you have a copy of the pin to show us.

**Mrs Leonard:** Yes, I have. We have, at your request, gone back to our designer, and they have come to us with another design which is a result of the special requests you made. I will pass it to you and you can pass it around, and while you are passing it around I will go through the different points you had asked for specifically.

You had asked that the mace have a more detailed replica, more in keeping with the actual mace. In a design like this, they realize they will have to, in a final format, before we have a sign-off on it produce an exact replica, so they are quite prepared to do that closer to the completion of the pin.

You had also asked that "Legislative Assembly of Ontario" be embossed along the edge of the pin. That also is no problem. That is not on this design, the reason being, again, that it is a mock-up of a pin as opposed to the final thing, but it can go on there without a problem. We must provide the supplier with the artwork, of course.

The prototype pin you have for the ladies has a joint catch and pin. I think the ladies looking at it at the moment will agree that the little clasp on the top that flips up and down works quite well if you wish to wear it on a pendant, and the pin will also work on a finer fabric.

The grip-fast clasp, which I have here as well if you are interested in seeing it, is what would be on the men's pin. An individual security number would be stamped on the back of each pin, and we would provide the supplier with those individual numbers. Again, it would depend upon which design members were to choose. The ladies would have the choice of either style; they would not necessarily have to go with the one with the little clip on it.

Our delivery time is approximately six weeks, so when you do make a decision, if your decision is to agree with what you see today, if you have any thoughts on it I would appreciate hearing that. I am very concerned, of course, with your decision about where the mace is going to fall, if indeed that is where you want it to fall or not.

**Mrs Marland:** My observation is that all the comments we have submitted, I think in three submissions now, have been met. I notice that the mace no longer protrudes out of the outside circle of the pin, so it will not catch on anything. This is absolutely beautiful; I think it is beautifully done. Can I see the back of it? The only comment I would make, if the women order it and that is the largest loop they can put, it is a very small thing if they want to wear it on a chain.

**Mrs Leonard:** They are prepared to work with us on that as well, if you are interested in obtaining a chain that would be specifically for that pin. They are prepared to work with us on that, so individual people could obtain a chain that would be—

**Mrs Marland:** I have a chain. Probably most of us have chains. They have done a beautiful job on the design of the pin, still including the amethyst, which was the suggestion of the Speaker and which I think was a great suggestion. It looks fabulous.

**Mr H. O'Neil:** I have a couple of suggestions. I like the design of the front of the pin, but I see that the back is this pin. To me, those are the worst things you can ever get hold of, where you slide this up and you have to put this through, for the women a blouse or a silk dress or something like that. It just pulls when you get the thing on there.

I was having a look at some of the federal pins. The federal pin is something like the men's pin with the single pin that goes through, so it does not slide back and forth like on the safety pin idea. Rather than just having it pushed in and hoping it will hold, the federal pin turns on a screw on the back; in other words, when you insert that through, this part, rather than just catching on it actually screws on to that pin that goes through. It is much more secure, and to me, just a better type of pin.

**Mrs Marland:** The only problem, Hugh, if I may, is that it is fine for a man if he has a buttonhole; you can put that thicker screw pin through. But for a woman—I think it would be fair to speak for the women—we do not like the stickpins. For one thing, if it is on something thin we have that big backer on it. We would prefer a brooch-type for women.

**Mr H. O'Neil:** You speak better for women than I do. For the men's pin, then, the only suggestion I would make is that the way it is, rather than just popping in there and hopefully being secure, it still shakes a little bit. If you had something like the federal men's pin, it goes through and screws on so that it cannot pop up or come off. But it is, as Margaret says, quite attractive.

**Mrs Marland:** I congratulate them.

**Mr Owens:** I agree with Margaret and Hugh that the pin is in fact a beautiful design and does incorporate the



suggestions this committee has made, as well as the Speaker.

I also appreciate Hugh's request with respect to the screw fastener. I think that is a great idea, and I think we should move forward with the suggestions. Hopefully at our first meeting in the spring, we can have a look at the final design.

**Mrs Marland:** Another four months? If this can be ready for six weeks, why do we not approve it today?

**Mr Owens:** I have no problem approving it. It is just getting the suggestions incorporated.

**Mrs Marland:** If the suggestion is having one style for women with the brooch-type pin on the back and the stickpin with a screw thread on it for the men, those comments have been heard.

It would give me a great deal of pleasure to move a motion, Mr Chairman, to approve this pin for which I have now been lobbying six and a half years. I am really happy that the Ontario members of Parliament are now going to have an identifying pin to wear, from a security point of view primarily, but also for the reason that it has been helpful for all the years that federal members of Parliament have worn a similar identifying pin. I congratulate the people who have been working to come to this final design and the time and effort of our staff here in the Legislative Assembly on this matter also.

**Mr Owens:** I was going to move a motion, but I think this has clearly been Margaret's pet project and it would give me great pleasure to yield that honour to her.

**The Chair:** Margaret, did you wish to move the motion?

**Mrs Marland:** I think I just did.

**The Chair:** Sorry. There is a motion on the floor. Is there any debate on the motion? Hearing no debate on the motion, is it the pleasure of the committee that the motion carry unanimously?

Motion agreed to.

**The Chair:** Again, on behalf of the Chair and on behalf of the committee, I offer my congratulations. I think we have an excellent product here, and I know all members of the House will be proud to wear that pin. Thank you very much.

**Mrs Leonard:** Thank you very much. We will look forward to revealing the final. In a very short time actually, you should have it, Mrs Marland.

**Mrs Marland:** I can put it on my Christmas list?

**Mrs Leonard:** Yes, I think you can this time.

**The Chair:** Thank you. Before we go into our closed session and discussion dealing with security, is there any other business before the committee? I have one as Chair,

if you indulge me for a few minutes; that is, that the subcommittee did not meet today because of circumstances and, as this is the last committee meeting of the session, I look for the committee to delegate authority to the Chair and to the subcommittee to deal with the planning of the upcoming spring break committee meetings and then reporting back to the committee on its first meeting in the spring break.

**Mr H. O'Neil:** Why could we not settle some of that today?

**The Chair:** As I understand it, we are not too sure exactly what this committee will be doing at this point. There has been some discussion that this committee could deal with parliamentary reform or that it could deal with another matter that has been the subject of question period for the last couple of weeks. At this point, the Chair is at a disadvantage in that I am not too sure yet what the agenda will be.

**Mr H. O'Neil:** So what you are proposing is that the subcommittee would meet when?

**The Chair:** As soon as the agenda becomes clear as to exactly what the House leaders want to happen.

**Mrs Marland:** The subcommittee is at the call of the Chair. If the other members were out of town, we do have three members of this committee that are fairly close. We could meet with you, Mr Chairman, or have a conference telephone call with you. I am sure those concerns can easily be met.

**Mr H. O'Neil:** The idea of a conference call is a good one. We do not know what is going to happen, and some of us may be out to our ridings or some may be in Toronto. I think that is an excellent idea.

**The Chair:** Thank you for the suggestion. Any further comments? I see none. Is there any other business for the committee before we go into closed session?

As Chair of the committee, I wish all members of the committee a happy Christmas and a prosperous new year. Thank you for your co-operation and non-partisanship during the year. Hopefully, this committee will continue to operate that way in 1992. Thank you.

**Mrs Marland:** Thank you. We return your felicitations and especially agree with the comments about it being, as far as possible, a non-partisan committee. I think that is why we do work so well together.

**The Chair:** Thank you, Margaret. This committee will now go into closed session for a discussion of security with the Sergeant at Arms and Barbara Speakman. Is the Speaker in attendance as well? Thank you. This committee is now in closed session.

The committee continued in camera at 1620.

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**Vice-Chair:** Frankford, Robert (Scarborough East NDP)

Cooper, Mike (Kitchener-Wilmot NDP)

Farnan, Mike (Cambridge NDP)

Marland, Margaret (Mississauga South PC)

MacKinnon, Ellen (Lambton NDP)

Mathysen, Irene (Middlesex NDP)

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Villeneuve, Noble (S-D-G & East Grenville PC)

**Substitution:** Mills, Gordon (Durham East NDP) for Mrs Mathysen

**Clerk:** Arnott, Douglas

**Staff:** Yeager, Lewis, Research Officer, Legislative Research Service











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Permanent

M-24 1992



M-24 1992

ISSN 1180-436X

## Legislative Assembly of Ontario

First Intercession, 35th Parliament

## Assemblée législative de l'Ontario

Première intersession, 35<sup>e</sup> législature

## Official Report of Debates (Hansard)

Tuesday 28 January 1992

## Journal des débats (Hansard)

Le mardi 28 janvier 1992

## Standing committee on the Legislative Assembly

Organization

## Comité permanent de l'Assemblée législative

Organisation



Chair: Steven Offer  
Clerk: Douglas Arnott

Président : Steven Offer  
Greffier : Douglas Arnott

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday 28 January 1992

The committee met at 1332 in room 228.

### ELECTION OF CHAIR

**Clerk of the Committee:** Honourable members, it is my duty to call upon you to elect a Chair of the committee. Are there any nominations?

**Mr Christopherson:** I move Mr Offer.

**Clerk of the Committee:** Are there any further nominations? There being no further nominations, I declare Mr Offer elected Chair of the standing committee on the Legislative Assembly.

### ELECTION OF VICE-CHAIR

**The Chair:** Thank you very much. The next order of business, as indicated in your agenda, is the election of the Vice-Chair. Is there a motion from the floor?

**Ms Poole:** I nominate Mr Miclash.

**The Chair:** Mr Miclash has been nominated as Vice-Chair. Is there anyone else? Seeing none, Mr Miclash shall be elected Vice-Chair of the committee.

### ORGANIZATION

The third item of business on the agenda is the appointment of the subcommittee on committee business. I believe Mr Arnott has provided a motion for the committee members. Prior to asking for motions, I would just note that on the fourth line it says, "that substitution be permitted on the subcommittee upon written notice." I am wondering if it is acceptable to members of the committee that, in the event that there is the need for substitution on the subcommittee, the necessity for notice not be required.

**Mr Christopherson:** Just a question. I do not know if that is the usual routine. The only concern I have is ensuring that if we are in the process of in camera, confidential matters, there are not people breezing in and out declaring, "I'm a member of this," without any kind of formal substantiation, given the sensitivity, perhaps, of some information.

**The Chair:** I believe the normal practice—and correct me if I am mistaken—is that if there is the need for a substitute for the subcommittee, notice need not be given. It would be on the understanding, of course, that there is not going to be a revolving door in and out, but there are certain times when there are members who are on the subcommittee who cannot make a subcommittee meeting. I think we are all aware of the terms of reference and the responsibilities given to the subcommittee. It might be best and in fact most convenient if people could be part of a subcommittee without the necessity of any formal notice.

**Mr Christopherson:** With the caveat that if there seems to be any kind of difficulty with that, we could bring this back to the committee to reconsider. With that understanding, we can live with that proposal.

**The Chair:** I think that is fair.

We have to make a motion for members on the subcommittee. Though we have had some discussion around the motion itself, I will now ask for names for members from each caucus to stand on the subcommittee.

**Mr Hope:** I will put forward Dave Christopherson's.

**Mr Grandmaitre:** Mr Conway.

**Mrs Fawcett:** Mr Harnick.

**The Chair:** Having decided those three names, I would ask for someone to read in the motion, with the alteration as discussed and the insertion of the names.

**Mrs Fawcett:** I move that a subcommittee on committee business be appointed to meet from time to time at the call of the Chair, or at the request of any member thereof, to consider and report to the committee on decisions relevant to the committee's terms of reference; that substitution be permitted on the subcommittee; that the presence of all members of the subcommittee is necessary to constitute a meeting, and that the subcommittee be composed of the following members: Mr Christopherson, Mr Conway, Mr Harnick and the Chair, Mr Offer.

**The Chair:** Motion carried? Carried. That completes the matters—yes, Mr Harnick?

**Mr Harnick:** Can you provide us with a list of the members of the committee at this time? I mean, is this the way the committee is going to be constituted? I know Mr Eves is going to be on the committee.

**The Chair:** May I make a suggestion? Can we have the clerk provide a copy of the list of members who are going to be members of this committee for this purpose?

**Mr Harnick:** Can I just advise you what my concern is? I have seen through House leaders' meetings who the proposed members are likely to be. It may well be that someone who has been proposed as a member to serve on this committee may be in a conflict of interest, in that someone who might be on the committee might ultimately be a witness before it, in light of certain information that has come to light very recently and has been published. If that is the case, I think maybe we should move to avoid that conflict now and discuss that.

**Mr Christopherson:** I am not aware that there is any type of difficulty like that with the makeup here today. This is an organizational meeting. It was an attempt to find people who are available, and we are meeting by agreement of the House leaders ahead of the actual time because we wanted to facilitate the business of the subcommittee. Could I suggest that perhaps if Mr Harnick could wait until we have submitted the permanent list, which will be forthcoming, then we could perhaps take a look and see if there are concerns such as those he has raised, or other concerns.



**The Chair:** Does that meet with your concern at this point, Mr Harnick?

**Mr Harnick:** I had hoped that we could have had the names of everybody who is going to be on this committee and that we could have dealt with it.

**Mr Christopherson:** As far as I know, there are still some questions of schedules with some of the members who are being considered on our side. That is the only thing holding it up that I am aware of, and that is why I say that should be coming very soon.

**Mr Harnick:** My understanding is that the final list of who the members were to be was submitted to the House leaders on January 8. I do not know why we are playing games here and why we are not disclosing who the members are going to be. Obviously we are going to have a problem, and let's deal with it now. I know that list was submitted.

**The Chair:** Mr Christopherson, do you wish to respond?

**Mr Christopherson:** Yes, I would. First of all, I am disappointed to hear the word "games" being used, because there are not. The permanent substitutions are to be coming. I was just advised that the document will be in the hands of the opposition parties tomorrow from our side. There is no attempt at any games whatsoever.

**Mr Harnick:** Can we disclose at this time who was on that list that was submitted January 8?

**Mr Christopherson:** I do not have it with me.

**Mr Harnick:** Maybe you can ask the representative of your House leader, who I noticed was speaking with you.

**Mr Christopherson:** I do not think it is private information.

**Mr Grandmaître:** Would the clerk not have that list?

**Mr Harnick:** The clerk might have that.

**Clerk of the Committee:** Yes.

**Mr Harnick:** Can you disclose that to us?

**Clerk of the Committee:** The membership list of this committee was composed of lists submitted, as required by the House, by each party whip on January 8. The names were Gilles Bisson, David Christopherson, Sean Conway, Ernie Eves, Charles Harnick, Randy Hope, Frank Miclash, Gord Mills, Sharon Murdock, Steven Offer, Steve Owens and Ian Scott.

**The Chair:** Does that address your concern, Mr Harnick?

**Mr Harnick:** Yes, it does.

**The Chair:** If there is no further matter, that completes this organizational meeting. Before adjourning, however, I would ask if the subcommittee members might wish to hold back just a little bit. I think we all recognize this committee has been convened as a result of unanimous consent by the House leaders to allow the subcommittee to start dealing with some of the mechanics in this committee. If possible, I would like to devote a few moments afterwards to talking to the members of the subcommittee, with a view to deciding when our next meeting should be, so more of the mechanics and the structure can be determined. If that is agreeable, we will adjourn at this point in time.

The committee adjourned at 1344.

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## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

**Chair / Président(e):** Offer, Steven (Mississauga North/-Nord L)

**Vice-Chair / Vice-Président(e):** Miclash, Frank (Kenora L)

Bisson, Gilles (Cochrane South/-Sud NDP)

Christopherson, David (Hamilton Centre NDP)

Conway, Sean G. (Renfrew North/-Nord L)

Eves, Ernie L. (Parry Sound PC)

Harnick, Charles (Willowdale PC)

Hope, Randy R. (Chatham-Kent NDP)

Mills, Gordon (Durham East/-Est NDP)

Murdock, Sharon (Sudbury NDP)

Owens, Stephen (Scarborough Centre NDP)

Scott, Ian G. (St George-St David L)

**Substitution(s) / Membre(s) remplaçant(s):**

Brown, Michael A. (Algoma-Manitoulin L) for Mr Miclash

Fawcett, Joan M. (Northumberland L) for Mr Scott

Grandmaître, Bernard (Ottawa East L) for Mr Conway

Sutherland, Kimble (Oxford ND) for Mr BissonWood

Ward, Brad (Brantford ND) for Ms S. Murdock

**Clerk / Greffier:** Arnott, Douglas

**Staff / Personnel:** McNaught, Andrew, Research Officer, Legislative Research Service













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ISSN 1180-436X

## Legislative Assembly of Ontario

First Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Monday 10 February 1992

### Standing committee on the Legislative Assembly

Inquiry re  
Ministry of Health  
information

## Assemblée législative de l'Ontario

Première intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le lundi 10 février 1992

### Comité permanent de l'Assemblée législative

Enquête concernant  
certains renseignements  
du ministère de la Santé



Chair: Steven Offer  
Clerk: Douglas Arnott

Président : Steven Offer  
Greffier : Douglas Arnott

Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Monday 10 February 1992

The committee met at 1406 in room 228.

### INQUIRY RE MINISTRY OF HEALTH INFORMATION

**The Chair:** Seeing a quorum, I would like to call this meeting of the standing committee on the Legislative Assembly to order. All members are aware of the terms of reference of this committee as ordered by the House. We will commence with our inquiry in a few moments' time.

I would like members of the committee to recognize that the subcommittee has been meeting for over a week now to determine and develop certain rules of procedure in this matter, that some of the mechanics of this committee have been the subject matter of subcommittee meetings, and that as a result of the terms of reference we have retained counsel to the committee. Counsel is sitting to my left, that is Ms Patricia Jackson, and she has with her her assistant, Mr Bob Richardson.

Before inviting our first witness, I would just like to make two preliminary points, and this is to members of the committee and to all in this room. Under paragraph 10 of our terms of reference, it is stated that, "If there shall be any objection to the disclosure of information based upon the Freedom of Information and Protection of Privacy Act, the committee may continue the proceedings in camera." As we proceed, if there is that result, we will, as per the terms of reference as agreed to, be proceeding on an in camera basis.

The next matter which I would like to bring forward is that the opening questions as agreed to by the subcommittee will be taken by Ms Jackson. We have as a subcommittee decided upon that as one of her roles and responsibilities as counsel, and I alert members of the committee to that decision of the subcommittee. When Ms Jackson has completed her questioning, then we will, again as per an agreement by subcommittee, rotate questions to members of committee in the usual and normal course.

I wanted to make those preliminary points to inform committee members of some of the decisions of the subcommittee. I know that there has been a memorandum provided to members of the committee on other matters of a mechanical nature. Having said that, I would like to recognize Mr Christopherson.

**Mr Christopherson:** Thank you, Mr Chair. Just briefly, to focus on the matter of the in camera—and I had hoped that Ms Jackson might just articulate a bit that that decision this morning was made on her recommendation, having reviewed the Freedom of Information and Protection of Privacy Act and other relevant pieces of legislation and other matters in terms of reference pertaining to this. However, that not having happened, I would just like to say that following our meeting, I met with the government members of our committee and advised them of our decision this morning so they were prepared for what would

happen when we opened up. I just would like to say that while the committee members are supportive of the decision and believe that it is the right decision under the circumstances and that following the terms of reference this is what should happen, they did ask me to mention just a few concerns that they would like on the record—not in any way meant to prohibit or prevent us from going in camera, but just there for the record.

The first is that they would like to be sure that we are very clear when we are advising the public about going in camera that the purpose is to receive very, very specific personal information, and that we not leave the perception that this open process is in any way being closed or turned inward. They were very concerned that that perception be very clear as to why this was happening and that it was not contrary to the terms of reference nor contrary to the wishes of the Legislature.

Second, they did want to acknowledge the possibility, once the information is given, for leaks, and just a concern that they had, given the personal nature of that, for the ramifications, the implications and that they were concerned about that.

Also, if there was any possibility that information could be given—if there were any means that could provide that information be given other than going in camera—for instance, if it was personal information and any individual might perhaps be willing to voluntarily have that information made public—that would be a means of preventing the committee from going in camera. If those means or any other are at our disposal, we would very much like to see those pursued.

Two last points: One is that the committee go in camera as little as possible, that we spend as little time in camera as possible, and that that be something that we are constantly aware of. The last point is that we very clearly indicate the kind of information that we are going to be talking about, the subject matter, as much as possible in the public session so that the only thing left remaining to discuss internally is the actual information and facts at hand, and that the public understand why we are going in camera and what it is that we are going to discuss.

With all of those concerns out there, Mr Chair, I would just indicate that we are prepared to support the recommendation of counsel and the decision of the subcommittee.

**The Chair:** Thank you very much, Mr Christopherson.

ROBERT MacMILLAN

**The Chair:** If there are no further matters, I would like to welcome Dr Robert MacMillan, who is the executive director of the health insurance division of the Ministry of Health. Dr MacMillan, you may, as a preliminary matter, wish to indicate those who are sitting with you at



the table, and following that, we will allow Ms Jackson to open up questions.

**Dr MacMillan:** Thank you, Mr Chairman. I have my executive assistant, Mary Fleming, at my right, and two lawyers representing ministry personnel at these proceedings on my left, John Page, and on my far left, Stephen LeDrew. I thank you for the invitation to come and try to enlighten the committee. I think I do have a lot of information that they will be interested in, and I will try to speak honestly and openly about everything I know about this matter.

**The Chair:** Thank you very much, Dr MacMillan. Ms Jackson?

**Ms Jackson:** Dr MacMillan, I understand that you are, as the Chair has indicated, currently the executive director of the health insurance division of the Ministry of Health and that you have held that position since April of 1989?

**Mr Page:** We had discussed the witness going under oath.

**The Chair:** Excuse me.

**Mr Page:** Will the witnesses testify under oath?

**Ms Jackson:** I am sorry, I had understood that Dr MacMillan had been sworn.

**The Chair:** I have just been informed that Dr MacMillan has not yet been sworn, and I would remind all members that was a decision of the subcommittee. The clerk is now proceeding with that swearing of an oath.

**Ms Jackson:** While we are seeing to those arrangements, can I just ask if you can hear? There is some suggestion this mike is not working. Is it working now?

**The Chair:** The clerk is feverishly running down the halls of the Legislature.

**Ms Jackson:** Generating the only heat in the building.

**The Chair:** Ladies and gentlemen, we will just allow the clerk to get his seat. There will just be the administration of the oath. May we have order here, please.

Dr Robert MacMillan, sworn.

**Ms Jackson:** Dr MacMillan, now that you are under oath, sir, you are still the executive director of the health insurance division of the Ministry of Health and have held that position since April of 1989?

**Dr MacMillan:** Yes.

**Ms Jackson:** And, Dr MacMillan, you have provided the committee with a copy of your curriculum vitae, and if that is agreeable, Mr Chairman, I suggest we mark that as exhibit 1. The clerk has copies that he will be distributing around.

Dr MacMillan, without belabouring the many credentials that are set forth in this curriculum vitae, but just so the committee has a general sense of your background, sir, I understand that you graduated in medicine from Queen's University in 1964?

**Dr MacMillan:** Yes.

**Ms Jackson:** And received your certification in family medicine in 1973?

**Dr MacMillan:** Yes.

**Ms Jackson:** That you subsequently obtained a fellowship with the College of Family Physicians of Canada in 1981 and practised in the field of family medicine in Peterborough for 17 years?

**Dr MacMillan:** Yes.

**Ms Jackson:** After that, sir, and after serving as a provincial coroner for a number of years, in 1982 you became the chief coroner for eastern Ontario?

**Dr MacMillan:** Yes.

**Ms Jackson:** And in 1987 became the assistant deputy minister of Health, responsible for many things: community health, public health, health promotion, laboratories and community mental health?

**Dr MacMillan:** Yes.

**Ms Jackson:** And you have held, as we said, your present position since 1989?

**Dr MacMillan:** That is correct.

**Ms Jackson:** Now, Dr MacMillan, you have provided to me as well, and I will ask the clerk to distribute to the committee, a brief chart that shows the approximate organization of the health insurance division. Mr Chairman, could we mark that as exhibit 2?

**The Chair:** So marked.

**Ms Jackson:** As I understand it, Dr MacMillan, the health insurance division is one of three divisions in OHIP?

**Dr MacMillan:** Yes.

**Ms Jackson:** The other two are the claims payment division—

**Dr MacMillan:** Yes.

**Ms Jackson:** And what does that do, sir?

**Dr MacMillan:** The claims payment division is essentially the operational side, the cheque-writing factory for OHIP, whereas I administer the policy side and the liaison with the public and with providers, including physicians.

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**Ms Jackson:** The other area of OHIP that is outside your direct purview is something called "information systems data"?

**Dr MacMillan:** Yes.

**Ms Jackson:** What happens in that division?

**Dr MacMillan:** That division is responsible not only for the systems network within OHIP but for the whole ministry as a whole. The systems division is of course a division of experts with regard to the whole support and management of data within the ministry as it relates to all the programs, including of course, for my purposes, those for the payment of claims to physicians.

**Ms Jackson:** Within the health services division there are I think three areas in essence?

**Dr MacMillan:** In the health insurance division I am responsible for three areas.

**Ms Jackson:** Those are set out on exhibit 2?

**Dr MacMillan:** Yes.

**Ms Jackson:** Could you point out what those are?



**Dr MacMillan:** One is the provider services branch. That branch is a group of about 37 people who are responsible for the daily dealings with physicians and other providers who are paid on a fee-for-service basis, and for the record those are physiotherapists, podiatrists, chiropractors and optometrists.

**Ms Jackson:** All those people are comprised in the term "provider" in this branch?

**Dr MacMillan:** That is right. The other branch is client services. That is dealing with the issue of your red and white health card and of course the eligibility, the administration and the planning for the policy of those who are eligible, those who are inappropriately in possession of a card and all the issues with regard to dealing with the public and their benefits.

**Ms Jackson:** Focusing for a moment on the provider services branch, Dr MacMillan, can you briefly describe the areas of activity that take place within that branch?

**Dr MacMillan:** The business of OHIP of course is only one purpose, that is, to pay claims from physicians and other providers. For the purposes of our discussion, it might be simpler if I keep calling them physician payments. The job of that branch is to develop all the policy respecting the payment, the dealings with the Ontario Medical Association with regard to the various fees ascribable for different procedures and examinations, the policy with respect to the use of the fee schedule by physicians and the monitoring and determination of the appropriate use of that fee schedule, and the detection in some cases of those who appear to us to be using it inappropriately.

In addition to that, we are also responsible for the out-of-country benefits with regard to OHIP and we monitor the payment policy regarding your benefits when you travel outside the country.

**Ms Jackson:** Can you describe, Dr MacMillan, for the committee the kinds of records—and I am focusing here on the question of payments to physicians—the provider services branch maintains in order to fulfil its job?

**Dr MacMillan:** We have to have of course every bit of input that has been given to us by the physician or his staff for the purposes of determining the legitimate claim and for ascribing the appropriate fee to that claim, and getting an amount determined and issued of course through computer to the claims payment division to issue the cheque to the physician.

Physicians commonly submit their claims either by paper, which is on a card like an IBM card that has various codes on it—there is no personal information any longer as of last year, simply codes for a person's name, codes for the diagnosis, codes for the type of service rendered—or, in about 60% of claims received, and that is of about 120 million claims a year to OHIP, we receive it on machinery that will input, usually in the form of a diskette.

That information is sent to OHIP, if I can use that general term. It is initially dealt with through the district offices which are scattered around Ontario and receive that information and then of course process it into the mainframe.

That information then can be retrievable either by the district office in the conduct of their business, which is

often dealing with the physician or with his or her staff, and on numerous occasions, especially of recent time with thresholds, by our provider services branch. The provider services branch has, among its employees, approximately 12 physicians who have usually been community physicians who have had experience in general practice or one of the specialties who then, as I did, come into the employment of the ministry and with OHIP in order to provide that liaison between a very expert type of field and the ability to monitor and assist with payment.

**Ms Jackson:** You mentioned there were 120 million claims processed a year. It was not clear to me from what you were saying whether those were the ones that were electronically processed or whether that is the total for the year.

**Dr MacMillan:** Approximately 60% of the input presently comes on machine-readable input. We are moving towards eradicating paper claims as soon as possible because of the huge and expensive difficulty in dealing with hand-written claim cards.

**Ms Jackson:** As a result of the generation of the data you have just indicated, I take it that within the provider services branch you would have records, first of all, for every individual physician in the province.

**Dr MacMillan:** Yes, that is true, and when you say records, it is not as if their filing cabinet is full of records. The great amount of data is retrievable from the mainframe if and when those selected people who have authority to look for that information are given that authority and it is necessary for the purposes of the particular person's duties. We have every bit of information on every billing by a physician and we are able to, of course, look at profiles and comparisons and assess the physician's practice patterns.

**Ms Jackson:** All right. I am going to come to that in a minute, but just so we can have a sense of what is in the computer for these physicians, we have the physicians' names and in addition each of the services the physician has billed for.

**Dr MacMillan:** Generally when a physician issues a claim, as well as possible diagnostic or treatment information, we have the name of the physician, the identification number of the physician, which is unique to each physician in the province, the diagnosis of the patient, the procedure done and the payment code.

**Ms Jackson:** Is that done by code?

**Dr MacMillan:** Yes. Now that we have moved into a unique identifier, of course we no longer identify people by their names. Again, the measure was taken in part to protect confidentiality as much as possible. The patient's name is now a number that is matched to the patient's date of birth and that provides the identification necessary for a retrieval of data.

So in addition to information on the physician, the physician is providing, for purposes of a claim, as has occurred for decades in Ontario privately before and now publicly—the fact is that we have all the information on why people attend physicians and the particular diagnosis and treatment they had undertaken on behalf of the physician.



**Ms Jackson:** I take it from what you have said, Dr MacMillan, that in addition to having the physicians identified, the patients identified and the services identified by code, you would have as well records of how much was billed in what time period for each of those services?

**Dr MacMillan:** That is correct.

**Ms Jackson:** You mentioned that you sometimes do profiles with respect to physicians. Can you explain what meaning or meanings are ascribed to the words "physicians' profiles" as you were using it?

**Dr MacMillan:** Yes. The profile of a physician becomes important when we are trying to assess the justification for a physician's billings. Having had experience on the private side of course for many years, I always like to give my opening comments respecting this to say the vast majority of the profession in the province are diligent and follow the rules impeccably. However, in the privileged world of physicians being able to now bill the public coffers, often at their own discretion, and making a lot of judgement calls about how to use that schedule of benefits that all physicians have in their offices, which includes about 5,000 different codes from which to choose, it is obviously very necessary and responsible for the government and OHIP in particular to exercise their best efforts in a fair environment to detect those people who like to go beyond the regular and allowable rules. Certainly the College of Physicians and Surgeons of Ontario endorses that rigorous review and so does the Ontario Medical Association, and any physicians out of the 20,000 physicians in the province who are deemed to be bad apples, of course they want us to detect them and bring them back on course. So I would say that this profile and the knowledge that we conduct these profile reviews is the best deterrent for physicians who may be enticed into aberrant behaviour.

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**Ms Jackson:** Dr MacMillan, can I just interrupt you? In a minute I am going to ask you about the process of analysis that you go through to determine whether there is something that should be examined in a physician's practice, but before we get to that point, and that will be a little way down the road, you used the words "physician's profile," and I think it would be helpful to the committee if you could explain what that phrase means or if it has more than one meaning when it is used in your branch.

**Dr MacMillan:** When we talk about a profile, it is not simply the raw data on the doctor as an individual and the billings but includes other things such as the cost-per-patient ratio. These would all be compared with physicians in that particular physician's specialty. The ratio of higher-priced to lower-priced services, for example; in the schedule there is an intermediate assessment. When you go to a doctor and there is something a little more than a simple thing and there is a minor assessment and the doctor has the discretion of picking one of those services according to his or her determination of the nature of the service, we look at that ratio of the intermediate assessment to the minor assessment.

We look at the frequency of repeat visits, whether one particular doctor has patients who tend to come back more

than others. There can be justifiable reasons for that, but that is examined. There is the frequency of diagnostic procedures: To what extent does one physician in a particular specialty order tests and do procedures in his office on his patients or her patients more than other colleagues? The frequency of assessments billed in addition to procedural fees is looked at, and the daily and monthly volumes of the particular physician. That type of examination, both intricately looking at the individual physician's billing, but as important, comparing to the profile of his or her colleagues, is what we call the profile.

**Ms Jackson:** Would I be correct to understand that when you say "profile" it may include some or all of those things, depending on the purpose for which the profile is generated?

**Dr MacMillan:** Yes, but there are some standard things. Indeed, where the profile is much more valuable is in general practice. It is found to be so valuable that indeed we mail it to every physician in the province once a year with a covering letter for the physician to pay particular attention to his or her profile and see that there are no significant aberrations, and if there are they might like to examine why they are so far off the mark as compared to their colleagues.

That is a very useful educational tool and is appreciated by the profession. They can order a more detailed profile if they wish, but we do not do that with specialties yet because the variance of types of work by specialties and subspecialties makes it much more difficult to look at a profile and analyse it. We have not found it of much value to just ship it out to individual physicians.

**Ms Jackson:** When you talk of obtaining a physician's profile, is it correct that in some cases you would get the full range of data you have described and in some cases you would get a much more summary description of some of the results of that full range of data?

**Dr MacMillan:** Yes, that is correct.

**Ms Jackson:** In any case, does a profile in any form exist without being specifically generated for each physician in the province?

**Dr MacMillan:** No. As I said, one is initiated for about half the physicians in the province, or general practitioners, but a profile is not generally brought forward from the computer, so to speak, unless we are looking at it for some particular reason.

**Ms Jackson:** I would like to talk to you for a moment about the procedures that are used to protect the confidentiality of the information you have just been describing and the other kinds of personal information that exist within OHIP. First, can you tell the committee what are the main statutory constraints on the disclosure of information within OHIP?

**Dr MacMillan:** The two main pieces of legislation are the Health Insurance Act and the Freedom of Information and Protection of Privacy Act. Section 38, RSO 1990, or section 44 if you have the old RSO 1980 book, stipulate certain requirements on the part of personnel involved in the administration of the Health Insurance Act, which is



abundantly clear that confidentiality must be held in high regard and protected at all times. In addition to that, of course, the whole government including OHIP is covered under FIPPA legislation.

**Ms Jackson:** What do you mean by FIPPA?

**Dr MacMillan:** I am sorry. Freedom of Information and Protection of Privacy Act, which demands that certain rules are followed with regard to not only the disclosure of information but also with regard to the protection of personal and private information. In addition to that, although I am not versed in it, I believe there is a public service legislation which also imposes confidentiality requirements on civil servants in the province.

**Ms Jackson:** Thank you, Dr MacMillan. I am going to ask that some of the salient extracts from the legislation that you made reference to now be circulated to the committee members. Perhaps in the interest of keeping it organized we will circulate those when the clerk comes back.

I am going to provide to members of the committee a description of personal information that is contained in the freedom of information act section 42, which prevents the release of personal information; section 38 of the Health Insurance Act, and section 10 of the Public Service Act, which will be coming around shortly.

On this topic I understand there have been prepared some briefing notes that summarize some of the security measures in place in OHIP, and I am going to ask that we mark as an exhibit some of those briefing notes and the security manual that is in place. I see the security manual, so I suppose we can start passing that around.

Mr Chairman, could I suggest, so we could keep track of this, that we mark these three statutory sections that will be distributed when the clerk returns, as the next exhibit, which would be I think 3.

**The Chair:** They are being distributed right now.

**Ms Jackson:** The two briefing notes should be exhibit 4 and the security manual exhibit 5, if that is agreeable, Mr Chairman. Can you, Dr MacMillan, while these are being distributed, assist the committee generally? The security manual, as I understand it, is one that has been in place for some time.

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**Dr MacMillan:** Yes, it has been in place some time, Ms Jackson, but I would like to point out that last fall it was updated, reviewed and reprinted, so it is a very fresh version of the security measures taken by OHIP and by the ministry with respect to the issue.

**Ms Jackson:** Of the two briefing notes—I have called them briefing notes—one is entitled Collection and Disclosure of Personal and Physician Records. Can you explain when that came into existence and for what purpose?

**Dr MacMillan:** I would like to say that our daily business is really exchange of information, so it is an area of considerable activity within the health insurance division. We act, to a great extent, as the interchange between the public and providers, even though claims payment—

**Ms Jackson:** Dr MacMillan, I am sorry. I think you may be anticipating what I am going to do next, but just so

the committee understands where these two documents came from, the first one, which is entitled Collection and Disclosure of Personal and Physician Records, what is that document and how did it come into existence?

**Dr MacMillan:** We made it up as a summary for the benefit of the committee when we knew we were going to appear.

**Ms Jackson:** Thank you. Similarly, the briefing note that talks about the issue being, "The standing committee of the Legislative Assembly will be performing an investigation into the dissemination of information obtained from the Ministry of Health," when did that come into existence and for what purpose?

**Dr MacMillan:** At the same time, in order to benefit the committee—within the past week.

**Ms Jackson:** I would like to focus, if I may, Dr MacMillan, on the briefing note that has the heading Briefing Note. As you move through that document you come to a page entitled "Access to Personal and Physician Records—Provider Services Branch." Do you see that?

**Dr MacMillan:** Yes.

**Ms Jackson:** I want to review with you, Dr MacMillan, the circumstances that are listed there as to when personal information relating to patients or physicians may be communicated outside the branch. I take it that is what these notes are, that they relate to circumstances in which that information goes out of the provider services branch?

**Dr MacMillan:** Yes.

**Ms Jackson:** The first instance you list there is to providers. Can you explain what that is?

**Dr MacMillan:** Yes. Again, physicians would be included as providers, and the branch I referred to earlier works in communication on a daily basis with physicians and their staff. In addition to that, of course, the district offices work on a close one-to-one basis with physicians' offices. We take precautions to be certain when a physician makes an inquiry by telephone or in person that indeed that is the physician. You can understand that many of the local people begin to know and recognize the voice and so on of physicians and their office employees with respect to their billings. We often request the provider number, which is generally limited, and the physician would identify himself or herself not only by name but also by providing the unique provider number. We have not experienced any difficulty in that liaison. There is always the chance of someone misrepresenting himself, but staff are generally well trained and use prudence in giving any information, especially when it relates to a physician's income or any information about patients whose claims were sent in by that physician.

**Ms Jackson:** Dr MacMillan, the next indication is that you provide that information to clients. Can you explain to the committee when that happens and under what circumstances?

**Dr MacMillan:** Out of 10 million people, of course, there are always individuals who have trouble with their benefits, either here in the province, in other provinces or, of late, outside the country. Those patients have often paid



a bill on their own. They may have had a problem with what they perceived to be a charge made by their physician. They call with all sorts of concerns about their health benefits. There is constant liaison with the public with respect to general information and policy, and also very sensitive and detailed information, often including diagnostic information.

Again, if it is of a general nature, staff try to give good customer service, both locally and at our client services branch, which I am responsible for, and it usually works very well. In addition, however, when requests are made about what a doctor has diagnosed them as having or what charges doctors or a group of doctors have made, claiming to be the patient, we always refer that type of information to our freedom of information coordinator. They are obligated to go through the proper process of this freedom of information legislation in order to retrieve their personal information.

**Ms Jackson:** Why is that?

**Dr MacMillan:** Well, it is obvious, because we have less ability to be certain of the identity of a person, because with 10 million people out there as compared to 20,000 who depend on their livelihood from OHIP, there are people who would sometimes use the information in a negative way. Often estranged spouses and so on are trying to gather information. Staff are very sensitive to that and just automatically provide no information by telephone or in writing about diagnostic information provided by providers, and send them to the freedom of information coordinator.

**Ms Jackson:** And the next thing that you list on this page is that you provide that information to the finance and accounting branch. First of all, what is the finance and accounting branch?

**Dr MacMillan:** The Ministry of Health, as you know, is a very big ministry. We operate very large programs. The finance and accounting branch is another branch of the Ministry of Health, under the corporate services division, which is responsible for the writing of the cheques, allocating the amounts of money to be paid for persons or clients who are to receive cheques; as a good example, all of the hundreds and thousands of bills we have from American hospitals. When the determination is made as to the amount of money, the finance and accounting branch must have written direction as to what that particular hospital is to be paid.

In addition, they come into play in many of the individual cheques that we have to write to physicians, many of the administrative problems that we are faced with, most recently the threshold and directing the finance and accounting branch when a particular physician has reached the threshold and therefore to have that physician's cheque reduced in the appropriate amount.

**Ms Jackson:** Do I take it from that, Dr MacMillan, that the only information that ever goes to this branch is the information with respect to what amount is going to go on the cheque?

**Dr MacMillan:** Yes.

**Ms Jackson:** The next one is the district offices. Are the district offices within your division, Dr MacMillan?

**Dr MacMillan:** Just a minute, please. Go ahead.

**Ms Jackson:** Are the district offices within the health insurance division?

**Dr MacMillan:** The district offices are under the claims payment division management. There are seven district offices in the province and 11 satellite offices, the district offices being in London, Hamilton, Mississauga, Toronto, Oshawa, Kingston and Ottawa.

**Ms Jackson:** What information do the district offices have of the sort that is described here, personal information?

**Dr MacMillan:** As I indicated earlier, they of course deal with the physicians on the initial basis, receiving all their claims and often dealing on a daily basis with the various problems that crop up with respect to billings. At the district offices we have, in each district office, a medical consultant who is under my direction, who is technically under the provider services branch I talked about earlier, so that in addition to the clerical staff and the administrative and management staff in the district office, there is a physician who has a very significant role in dealing with physician issues and issues of the professional sending in bills.

**Ms Jackson:** Do the district offices have the physician records, by which I mean the information concerning a physician's billings, for what services, in what amounts, over what period of time and for what patients, for all the physicians in their area?

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**Dr MacMillan:** Certainly the physician has access to it. I am not certain to what degree they would have to have the assistance of senior people in the provider services branch to gain more detailed information, but part of the role and function of the district medical consultant, of course, is the initial scrutiny of claims made by physicians. It is sort of a twofold role that a medical consultant has. One is to be of assistance to providers and allow for the bureaucracy to work smoothly. At the same time, the physician is also there to educate the physician when he seems to be straying with regard to legitimate billing patterns and also to take a more punitive role, possibly in detecting untoward billings and notifying head office, where we would pursue it.

**Ms Jackson:** But Dr MacMillan, just in terms of the records that the district office has, do I understand that it has records with respect to all of the physicians in that district?

**Dr MacMillan:** Yes.

**Ms Jackson:** And it has records of the amounts that they billed during any particular period of time and for what services?

**Dr MacMillan:** I am not certain I know to what extent the period of time would extend. Certainly those yearly billings would be readily available to the medical consultant and the district officer.

**Ms Jackson:** I take it from that that they go through the district office, but after they are processed the records come pretty much directly to provider services?



**Dr MacMillan:** Again, I have told you before, and I will just repeat it, that records per se are in the mainframe of the computer, which rests on the top floor of the Macdonald-Cartier building in Kingston. So they have access, yes, to data which would provide them with physician billing totals, but I do not believe that most of us keep records on individual physicians in our offices any more. We do not need to.

**Ms Jackson:** So they have probably not much in the offices; it is the access to the mainframe in Kingston that the district offices have.

**Dr MacMillan:** I believe that is the best answer I can give you.

**Ms Jackson:** Do you know, sir, what security arrangements are in place in the district offices to protect the confidentiality of access to that information?

**Dr MacMillan:** I believe the security arrangements are the same in the district offices as they are in head office, so when I describe them I think I can be rather uniform in saying that we undergo similar precautions. We are subject to the security manual whether we are in Kingston or a district office and we are also of course subject to the same three pieces of legislation.

**Ms Jackson:** The general statutory framework is the same and the security manual is the same. Do you actually know how that works in practice in the district offices?

**Dr MacMillan:** I think I am not the best witness to question on that further. I have given you the best indication I can. I spoke as recently as this morning with our official security officer, who is solely responsible for these procedures across the ministry, inspecting them and being certain that managers are following them. He gave me assurances this morning that he was quite proud of the maintenance of these policies by ministry staff in the district offices as well as head office.

**Ms Jackson:** But so the committee understands, Dr MacMillan, if members of the committee want to find out in detail what happens in the district offices, they should not be asking you. Is that fair?

**Dr MacMillan:** That is right.

**Ms Jackson:** The next item on this list is the medical eligibility committee. What is that, Dr MacMillan?

**Dr MacMillan:** The medical eligibility committee is, in essence, an appeal board. It is set up by statute, in the Health Insurance Act. It is a group of physicians or other providers—a group of physicians, I am sorry—who are appointed by the minister who sit in adjudication of bureaucratic decisions. My staff, in assessing whether or not a claim is to be paid to a physician, or indeed for a benefit to be given to a patient—the best example and one of the most common ones is something that we believe is cosmetic surgery, which is not covered as a benefit, and the patient believes it should be covered as a benefit because there are some medical symptoms associated with the cosmetic defect.

That committee then adjudicates cases in which, rather than simply flatly turning down the patient, we take it upon our initiative to refer cases, indicate to the patient or the physician that we are asking for a second opinion, as

you would, and go by the decision as final, what the medical eligibility committee decides.

**Ms Jackson:** Do I take it that the only information, then, that the medical eligibility committee gets would be information with respect to a particular service in a particular case that is under review?

**Dr MacMillan:** Yes, and they are subject by the act to exactly the same degree of confidentiality that we are.

**Ms Jackson:** The next one listed here, sir, is the medical practitioner review committee, and I would like to defer that for a minute and come back to it. Then you list the Health Services Appeal Board. What is that, Dr MacMillan?

**Dr MacMillan:** The Health Services Appeal Board is, again, a court or tribunal that looks into appeals of patients in particular, but also physicians, with regard to payment policies or eligibility. So on the client's side, if we deny someone, for instance, OHIP coverage—maybe they are out of the country too long or we have found they are not legally entitled to remain in Ontario—that appeal mechanism is through the Health Services Appeal Board. Again, appointments are made by the Minister of Health: a chairman, I believe the board has two positions appointed, and the rest are lay people. They would hear in a quasi-judicial way our side of the story and the patient's side of the story.

On the physician's side, they become involved in decisions, again, where we rule against a physician, and the physician, in particular in interpretation of the schedule of benefits, would have a different view. The appeal mechanism is well known by physicians, and they will take their concern there with respect to our ruling.

Out-of-country payments would be another example where patients feel they should, of late, be covered for 100% of benefits for a service that was not available in Ontario and in the United States, and they are beginning to make appeals to the Health Services Appeal Board about our decision that it was not medically necessary for an urgent trip to the United States.

**Ms Jackson:** I take it the only information that would go to the Health Services Appeal Board is the information relating to the particular case brought by the appellant, be that a physician or a patient.

**Dr MacMillan:** Yes.

**Ms Jackson:** That is a public hearing?

**Dr MacMillan:** Yes.

**Ms Jackson:** Then the next thing that you list, Dr MacMillan, or that is listed here is the negotiations secretariat. What is that, Dr MacMillan?

**Dr MacMillan:** The negotiations secretariat is the recent terminology for a small unit in the Ministry of Health that is at Queen's Park. It is on the ninth floor of the Hepburn Block, and it is directed by Dr Eugene LeBlanc, who is an executive director. This unit was set up shortly after the recent agreement between the government and the Ontario Medical Association, which was signed on June 4, 1991, and took effect back on April 1, 1991.

This agreement is rather a landmark agreement for Ontario which is very, very different from the 15 or 20 agreements that



have taken place since medicare began, and it provides for a number of things that never before were contemplated and never before had to be administered. As a result, the deputy minister has set up this small unit to work in close cooperation with the health insurance division in order to assist the transition of physician payments in this new world and provide the policy and direction to the health insurance division as to its impact on physicians, and I will describe that later for you.

**Ms Jackson:** In what circumstances would personal information with respect to an individual physician's billings go to the negotiations secretariat?

**Dr MacMillan:** The information that has come in to both sides has been—

**Ms Jackson:** Both sides of what?

**Dr MacMillan:** By both sides I mean in Toronto the negotiations secretariat, their small unit of three or four people, and my larger operation in Kingston. Information has come in from many different sources but in general, the profession out there—the medical profession, especially those affected by the threshold—have been constantly communicating with Dr LeBlanc and his staff with regard to the same issues that they also tend to communicate with us. There has not been a very distinct division between the operations and the tasks that we perform in Kingston with regard to the implementation of the thresholds, and Dr LeBlanc's office, so there has been a fairly free and cooperative transmission of information back and forth, although most of the information on physicians' billing and so on is coming from the physicians themselves who are writing us, pleading exemption to the recent threshold agreement. Most of those letters have been channelled through Dr LeBlanc.

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**Ms Jackson:** They come through Dr LeBlanc to you?

**Dr MacMillan:** Yes.

**Ms Jackson:** But in terms of going the other way, for what purpose is personal information about a particular physician's billings sent from you to Dr LeBlanc's secretary? I say you; I mean your division.

**Dr MacMillan:** Yes. I do not think I have ever seen anything spelled out, as when something is up and running and clearly defined. We see job descriptions, we see organizational charts, we have been working diligently to invoke the terms of this agreement, and it has been an absolutely necessary thing that information travel both ways. As a result, "personal" information, if you want to use the word—I would say it is not so much personal but billings by a physician and how he or she might be affected by the threshold—is passed both ways from our office to Dr LeBlanc on a number of occasions, and the other way around.

**Ms Jackson:** Billings information by an individual physician is personal information as that term is understood under the freedom of information act, is it not?

**Dr MacMillan:** Yes.

**Ms Jackson:** And that does go from your division to Dr LeBlanc's secretariat?

**Dr MacMillan:** Yes.

**Ms Jackson:** For what purpose?

**Dr MacMillan:** For implementing the threshold with regard to the physician who is affected, and indeed to a great extent to assist the physicians who are very harshly hit by this threshold, to assist in finding ways to lessen the blow to their particular cash flow. It has always been done in a very congenial and collegial way with physicians who see us, for the most part, as their allies in trying to implement this in the fairest possible way.

**Ms Jackson:** So are you speaking of situations where particular physicians contact Dr LeBlanc?

**Dr MacMillan:** Yes.

**Ms Jackson:** And in those circumstances he sometimes asks for their personal billing information?

**Dr MacMillan:** Yes. To the extent that has happened, I cannot answer right now. I will try to determine more closely the degree to which there has been transmission of information. As I said earlier, in the vast majority of cases, the information is coming to us more than not, but Dr LeBlanc has attended alone and with me on many occasions sitting down with doctors, looking at their particular financial problem and looking to see to what degree the ministry can offer any assistance in the transition into this new agreement.

**Ms Jackson:** Do you know if the personal physician information that is transmitted sometimes from your division to Dr LeBlanc's secretariat is used for any purpose other than dealing with that individual doctor?

**Dr MacMillan:** I am aware of one case where a briefing note was required and personal information on the physician was sent.

**Ms Jackson:** Other than that instance—and it is one we are going to come to in more detail very shortly—are you aware of whether there are not other instances where personal physician information has been transmitted to Dr LeBlanc for a purpose other than speaking directly to the physician in question, or dealing with the physician in question?

**Dr MacMillan:** No.

**Ms Jackson:** Do you know if there are? Sorry, that was not a very well-worded question. You do not know if there are?

**Dr MacMillan:** No, I do not know that there are. I doubt that there have been, but I am not certain and I would be glad to find out.

**Ms Jackson:** Would you be able to find that out?

**Dr MacMillan:** Sure.

**Ms Jackson:** Would you? Thanks. What is the time frame within which you might be able to find that out, Dr MacMillan? It has to do with how we get this—

**Dr MacMillan:** By tomorrow, I think, to continue tomorrow. I will do my best.

**Ms Jackson:** I have the sense you may still be here tomorrow, so we will deal with that.



Are you absolutely content with the practice of transmitting this information outside the provider services branch into the negotiations secretariat in Toronto?

**Dr MacMillan:** I have thought a lot about that question. I would have to answer that if one were to do it again, it might be better to define a bit more appropriately for civil servants who are way down in Kingston who are sometimes intimidated somewhat by Queen's Park and senior officials in the Ministry of Health. There is a natural tendency for demands that come for our action—and they come daily—to jump, and there are time commitments and so on.

I believe that where information was being transmitted outside the health insurance division and the very careful and scrutinizing rules that we try to apply, we become more vulnerable to information being misused. I believe it is prudent to suggest, and indeed I have, that we define more appropriately and direct staff as to the exact protocol. In retrospect, I feel that had that been done, we might have conducted ourselves a little differently.

Having said that, again, the pressure is on in a very intense administrative area that has created tremendous uproar, upheaval and antagonism. We have been limited by fiscal constraints. We have not been able to add staff that we feel are necessary. People are working under a great deal of pressure and long hours and indeed judgements may not always be the best in those circumstances.

**Ms Jackson:** You say you have given some thought to whether there should be a protocol for the release of information from the provider services branch to outside the health insurance division. Are you able to give the committee any indication of what you think such a protocol would specify?

**Dr MacMillan:** Indeed, I think we do have a protocol for information. Indeed the Freedom of Information and Protection of Privacy Act does stipulate that we do not transmit information unless there is a "need to know." Certainly, it was the perception of our staff that people dealing with negotiation and transfer into the threshold world did have that need to know and therefore we were readily transmitting necessary information. That would not necessarily be the case with a totally different branch or division.

This particular unit, as I said, was set up by the deputy minister. It was urgently needed to be the transition here in Toronto with our head office in Kingston and provided a very useful and valuable aid in our trying to administer this very difficult new world of monitoring certain physicians' payments and paying them at a different level.

**Ms Jackson:** It would be fair to say that in the fall of 1991, at least until the end of December, from what you say, there was a presumption within your branch that if the negotiations secretariat asked for this kind of information, there was a need to know.

**Dr MacMillan:** Yes.

**Ms Jackson:** Let me then move on to the next item on this list. There is a reference here to briefing notes. You have provided me, Dr MacMillan, and let me ask to be passed out to members of the committee, something called

a Priority Briefings Guideline Booklet. That will be exhibit 6, Mr Chairman, if you are agreeable?

**The Chair:** That will be exhibit 6.

**Ms Jackson:** Briefing notes, as that term is used in the briefing note we have been looking at, and priority briefings in this guideline booklet, Dr MacMillan, are those the same things?

**Dr MacMillan:** I do not understand the question. Say it again.

**Ms Jackson:** On the list we are going through, you make reference to something called briefing notes.

**Dr MacMillan:** No, not necessarily. Briefing notes, as most MPPs would know, of course, are created for a number of different circumstances. They are created when a new government takes over. They are created for issues that various people in the ministry determine to be newsworthy and of prominence. They occur in an official way that we in the Ministry of Health, at least, refer to as priority briefings, which usually signifies a current issue of the day that is of newsworthy function on which the minister would require information and possibly the Premier for questions in the House, for response to the press, for response to the problem. So it is a gathering of information, as we understand it, for priority briefings, essentially for the use of a minister in that particular ministry.

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**Ms Jackson:** Whereas briefing notes may be gathered for other purposes as well.

**Dr MacMillan:** Yes.

**Ms Jackson:** The procedure that was in place for the gathering of information for priority briefings in the fall of 1991 is the one set forth in exhibit 6?

**Dr MacMillan:** Yes.

**Ms Jackson:** I wanted to ask you, Dr MacMillan, to turn to page 18 of that guideline. The number may be actually a bit hard to see. It is about six pages from the back, under the heading "Confidentiality."

**Dr MacMillan:** Yes.

**Ms Jackson:** There is a description of personal information in the middle of the page. That clearly would include, I take it, physician billing information.

**Dr MacMillan:** Yes.

**Ms Jackson:** Then there is a three-part test that is set forth there,

"The person to whom the information"—that is, personal information—"is going must: (1) need the information in the performance of his or her duties, (2) be performing duties that are a proper function of the ministry, and (3) be using the information for a purpose consistent with the reason for which the information was first collected."

Just stopping there, that is the need-to-know test that you were referring to before?

**Dr MacMillan:** Yes.

**Ms Jackson:** And that test applies to the dissemination of personal information, whether in the priority briefings process or any other process.



**Dr MacMillan:** Yes.

**Ms Jackson:** It should only be circulated within the ministry to the extent that there is a need to know.

**Dr MacMillan:** Right.

**Ms Jackson:** And it should never be circulated outside the ministry.

**Dr MacMillan:** No, not unless you have the consent of the person to whom the information refers.

**Ms Jackson:** The note goes on to say that if that information is to be put in a priority briefing, it must be on the basis of the test noted above, and then over on the next page there is an indication:

"Where to Place the Information: If personal or third-party information must be included in a priority briefing, it should be placed in the separate 'advice to the minister' section that follows the list of contacts. It should also be marked: sensitive and not to be disclosed."

When was that added?

**Dr MacMillan:** That had been the policy for a number of years. It was changed and it became the policy again following the incident with the last minister.

**Ms Jackson:** Ms Gigantes.

**Dr MacMillan:** Yes.

**Ms Jackson:** When you are talking about the more general kinds of briefing notes other than priority briefings, does the same rule apply that if there is to be confidential information, it should be separately noted and identified?

**Dr MacMillan:** Not necessarily. I would have to question, as I hope most of my employees would, the need for more detailed information if we knew that it was not going to the minister. The briefings of course could be for the deputy minister; they could be for someone in another area. I think that there is a great weight put on the knowledge that the minister is in need of the receipt of this information, and for purposes of interpretation of this request, when it comes from Queen's Park, we interpret that the minister needs to know, not that somebody on staff needs to know somewhere. So I would say that when we issue briefing notes that we do not believe are for purposes of the minister's information, we should certainly not be providing any confidential or personal information.

**Ms Jackson:** So for briefing notes other than priority briefings, it would be your view that it is not appropriate to pass on confidential information, or personal information, as I have used that term.

**Dr MacMillan:** Yes.

**Ms Jackson:** When a priority briefing request comes in to the provider services branch, who decides whether or not personal information will be included in the response?

**Dr MacMillan:** Each area, including mine, has a priority briefing coordinator, who in my case is my executive assistant, Mary Fleming, and we have a further very experienced employee who is the assistant briefing coordinator, who would act in the absence of my executive assistant.

**Ms Jackson:** Who is that?

**Dr MacMillan:** Jacqui Heath.

**Ms Jackson:** That is when the request for the priority briefing comes in.

**Dr MacMillan:** The request comes in usually from the executive assistant of our ADM, our particular area, and that is then delegated by the coordinator to someone in the branch who is appropriately capable of putting together the notes for the briefing. After it has been edited, possibly, by my executive assistant, I would then give final approval before it went out of my division, and going out of my division, it would go on to the executive assistant to the ADM, in this case normally Dr Dave McNaughton, and it would then be possibly edited or signed off again before going on to the minister.

**Ms Jackson:** So before personal information was included in a briefing to the minister, it would be vetted first of all by Ms Fleming, second by you and third by Dr McNaughton?

**Dr MacMillan:** Yes.

**Ms Jackson:** In the case of a non-priority briefing note, when that request comes in and is responded to, who is responsible for ensuring that it does not contain personal information?

**Dr MacMillan:** Whoever is asked for the briefing, to construct the briefing and get information for the briefing and be responsible for the writing of the briefing, sometimes has to get information from other branches within the ministry. It could be an issue in dialysis but you would have to involve the hospitals, maybe, as well as a free-standing clinic. It could be other issues that would require information out of one or two or maybe even three branches. In those cases, we would not have prime responsibility for the briefing to be forwarded. Although under normal circumstances our area is all on one floor, it would be often that I would be involved, or Mary Fleming, in finalizing or approving of anything going forward.

**Ms Jackson:** But that is not necessarily the case?

**Dr MacMillan:** No.

**Ms Jackson:** In which case the question of whether what goes forward has personal information or not is the decision of the person preparing the note?

**Dr MacMillan:** I would think it is more commonly at least the level of a branch director.

**Ms Jackson:** Does it have to be?

**Dr MacMillan:** No, because you must understand that there are many, many briefings or pieces of material, sometimes sentences, that are required for update. Briefing notes are updated routinely, and the request for information to be updated is made frequently to people who are involved in the program, which, with their good judgement, does not require the whole formal process to be engaged in all over again.

**Ms Jackson:** So is it just left to the personal judgement of the person who is responding what vetting the answer should have before it goes back to the person who requested the information?



**Dr MacMillan:** That has been, up until recently, the way it has worked.

**Ms Jackson:** Has that changed?

**Dr MacMillan:** We have implemented more formal processes to be able to further assess the degree and nature of the information being sent for accuracy and confidentiality before providing information to another part of the ministry.

**Ms Jackson:** When did that change?

**Dr MacMillan:** It changed after the incident on—

**Ms Jackson:** November 13?

**Dr MacMillan:** November 13, when I became aware of a document that judgement could have been better.

**Ms Jackson:** Can you assist us as to when it changed? Some time after that, but—

**Dr MacMillan:** We are working now on developing formal policy, but, again, it has been word of mouth directed that all briefing notes will come through my office.

**Ms Jackson:** Which means either you or Ms Fleming, does it?

**Dr MacMillan:** Yes, or if I am not there, someone who is acting in my position.

**Ms Jackson:** Let me return to this list we were marching through, and we are near the end. Freedom of information requests: Can you just briefly explain? That is a request for information under the freedom of information act?

**Dr MacMillan:** Yes, and we have one person solely designated in the division who works full-time, almost, on these numerous requests and the proper processing and work with the coordinator in Toronto for the act.

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**Ms Jackson:** And last you list research studies, and I take from what you say there that in circumstances where people consent to have their personal data included in a research study, you will release it for a research study?

**Dr MacMillan:** Yes, and that happens rarely and it is always in writing.

**Ms Jackson:** It is always—

**Dr MacMillan:** In writing.

**Ms Jackson:** I had said we would defer the question of the medical practitioner review committee and I would like to return to that now, Dr MacMillan, and ask you to explain for the committee the various processes by which physicians' billings are reviewed within your division. That, I take it, sir, looking at the organizational chart that we looked at earlier, would take place—if I can find the chart. What is the name of the branch within which that takes place?

**Dr MacMillan:** Provider services branch?

**Ms Jackson:** Sorry, it takes place under the manager of monitoring and control?

**Dr MacMillan:** Yes.

**Ms Jackson:** Who is that?

**Dr MacMillan:** Mr Peter Quinn.

**Ms Jackson:** What circumstances lead to a review of a particular physician's billings, first of all within the branch, within the provider services branch?

**Dr MacMillan:** There are a number of reasons why a physician may come to our attention, and I will try for the most part to give you an idea of what might spark a second look: Obviously, physicians who have very high-billing practices, and those high-billing practices can be a significant variant from their own colleagues in that same speciality. It may be, as I told you, variances in the cost-per-patient ratio. A physician could see as many patients as another physician, but the cost to the public purse could be double what it is for the average colleague in the same speciality. It could be an indication by the medical consultant in the district that he may have had difficulty rationalizing the way in which a physician was billing, and he could spark a further look by that unit in Kingston in order to assess the physician's proper billing. We could have complaints from patients. Indeed sometimes patients for some reason get the impression a physician may be billing on their behalf for services never rendered to them or rendered inappropriately. We would look at the physician's billings in that case to determine as best we could whether or not the services indeed were rendered.

In many cases, where in these various ways physicians rise to the top in this unit, we often will flood the practice with verification letters. I do not know whether you have ever received a verification letter, but we send out routinely to a random sample of patients in the province sort of a receipt for services that you should have received over a period of time in which not only the physician is indicated but the date, the type of service and the charge made on your behalf to OHIP. When we flood a practice, and if we indeed find the physician has been charging for services which patients come forward and tell us were never rendered—even, in rare cases, the patients never have heard of the physicians—those cases become obviously clear cases of fraud, and that source of detection of fraud, along with other reports and police interventions, amount to about two a year.

**Ms Jackson:** So the prospect of fraud or criminal charges is not a usual outcome of any kind of billing review within your ministry?

**Dr MacMillan:** That is correct.

**Ms Jackson:** If you get one of these sort of prompts for a second review, either from reviewing the profile of the physician's billing and its amount or from your regional office or from a complaint or an audit letter, what is the next stage of examination of a physician's billing?

**Dr MacMillan:** The analysis of all these data is done by a very experienced physician, who may well be testifying here, who has had years of experience in trying to make a fair determination of whether or not the physician has a particular reason for the abnormal services or abnormal costs. It may be, for instance, a demographic consideration. If he has got a very high geriatric patient load, that may result in more services. Or there may be other unique circumstances, such as a doctor in an area where there are insufficient such specialists and they may have to work



harder than they may even want to. So there are many legitimate reasons for aberrations from the usual and customary charges, but where those do not seem to be explained to us we then make the next move and that is through the legislation, refer this issue, this particular physician on to the medical review committee of the College of Physicians and Surgeons of Ontario, which is named in the Health Insurance Act as being responsible for the more detailed audit and assessment of physician accounts in the province that are of disturbance to us.

**Ms Jackson:** Dr MacMillan, you have provided to me, and I ask that it be passed out to the committee, a brief bulletin that describes this process dated December 19, 1989. Do I take it the description in there continues in general terms to apply to the process as it exists today?

**Dr MacMillan:** Yes, that is correct.

**Ms Jackson:** Could we mark that, Mr Chairman, as exhibit 7? The examination that you have just indicated takes place within the division. You mentioned that is done by an experienced physician. What is that doctor's name?

**Dr MacMillan:** Dr Simon Kovacs.

**Ms Jackson:** The result is that some accounts, as you say, are sent on to the MRC and it is listed in this bulletin. That happens when there is reason to believe that all or part of the insured services were not rendered, all or part of the services were not medically necessary, all or part of the services were not provided in accordance with accepted professional standards of practice or the nature of the services is misrepresented. But do I understand from what you have said, Dr MacMillan, that that analysis is just on the basis of the paper record of the billings; there is no attempt to go out and actually look at what happened or talk to patients or anything of that sort?

**Dr MacMillan:** No, we do not have the power of audit of a physician's office. I should say that there are sometimes conversations, of course, about the billing pattern, in which we try to provide an educative role, and where we believe that the physician has not become educated we then may resort to referring it on to the MRC. I think the point you are making I would agree with is that we do not have all the information in order to make a decision, and some subsequent decisions provide information which we know exonerates the physician. Nevertheless, at the level we have made that determination we believe there is a strong suspicion the doctor may be inappropriately billing OHIP.

**Ms Jackson:** And therefore it should be looked at further by inspection in the medical review committee?

**Dr MacMillan:** Yes.

**Ms Jackson:** So the fact that a physician is referred on to the MRC does not necessarily mean there is anything wrong?

**Dr MacMillan:** No.

**Ms Jackson:** It is actually described in the second page of this memorandum, but can you give the committee just a capsule summary of what happens when a physician's billing is referred to the medical review committee?

**Dr MacMillan:** For one thing, there is one big, long delay. The people who wrote the legislation in the Health

Insurance Act unfortunately put the size of the medical review committee of eight people in the statutes rather than in the regulations at the time when there were probably half as many physicians in the province. There are eight people listed to be appointed to the medical review committee, as I said: six physicians nominated by the College of Physicians and Surgeons and appointed by the minister and two laypeople appointed by the minister. That makes up, in essence, two teams.

It has limited our ability to administer OHIP as effectively as we would like, because we are faced with a huge backlog of cases to the extent that we do not even refer as many physicians that we believe should be referred. Over the past period of time, for instance, it has taken an average of 23 to 26 months from the time I sent a referral to the college before it gets back with its decision, so it is over two years in which if there has indeed been a bad pattern of billing, where the public purse is vulnerable to continued bad habits during that period of time.

When the MRC does make a decision, all its adjudication, all its investigations and all its decision-making is done in private; it is not open to public knowledge. Indeed the response from the medical review committee is also confidential. The penalty is to simply pay back what the committee adjudicates as being inappropriately billed during that window or that period of time two years earlier that we identified, what we thought to be bad behaviour. We have taken some steps recently to make other measures to educate and assist physicians in proper billing habits which we are ready to initiate, but sooner or later the MRC will have to be expanded in order to properly do the job it has been given.

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**Ms Jackson:** Dr MacMillan, can you briefly tell the committee what the stages of this process are once it gets to the medical review committee?

**Dr MacMillan:** I will give it as best I know it, but I have never been there so I am not certain of it. The fact is that we, confidentially, under the signature of the general manager of OHIP, who during the past several years has been Dave McNaughton—that individual signs the final document that we and our staff prepare, which goes to the medical review committee secretary, who is an associate registrar, Dr Roy Beckett. That information is then assimilated by staff, as I understand it, within the medical review committee, which is somewhat separated from the College of Physicians and Surgeons.

They likewise maintain a close confidential ethic with regard to their work. Indeed they are also subject to exactly the same confidentiality requirements under these pieces of legislation. They then decide on the basis of what we had sent them whether or not the physician should be inspected. If they determine that that next step should take place—and in the vast majority of cases they do—they will appoint a physician or physicians of the same specialty to contact the physician so reported to make a mutually convenient time to review records and will enter the office of the physician for a period of time, which could be a short period or several days, in order to scrutinize charts, in order



to look at books and in order to make the determination of whether the charges were legitimate or not legitimate.

They report, as I understand it, to the MRC, and the next threshold is whether or not the physician will be invited to an initial hearing before the committee. If the physician is not invited, then the inspection proves concerns to be invalid. The physician, as I understand it, is so notified and the ministry is notified that no recovery is recommended.

If, however, the physician, on the basis of the inspection and the material we had sent, is still under question, he may be invited to this first meeting and even a subsequent interview to further elucidate the details with regard to the billing. It is upon that second hearing that the MRC then adjudicates and decides whether or not billings have been appropriate.

We have been making an average of 60 referrals per year, but because of this backlog of about 130 cases we have this turnaround time which is unacceptable. It is very stressful indeed on the physician as well, who is living, obviously, in great concern over this lengthy period of time wondering whether or not he has done something wrong. But the average rate with which the MRC concurs with the Ministry of Health upon this more detailed evaluation is that anywhere between 60% and 70% of cases are found to have billed OHIP improperly. The MRC makes a decision to the extent of that excess billing and recommends to the ministry a recovery, and then we take over again with regard to the collection of that income.

**Ms Jackson:** So at the end of this process, which as you have said takes 23 to 26 months, you get a report back that says either a clean bill of health or some money is owed, is that right?

**Dr MacMillan:** And their decision as to why it was billed improperly and what they are basing their recovery on.

**Ms Jackson:** Now for the committee, because the committee has to consider as you know, Dr MacMillan, the question of confidentiality within the ministry, I think it might be helpful to understand how many people would know of this process by the time it has run to fruition, to the extent that you can help them with that. You say it starts with a review by Dr Kovacs and presumably his staff. About how many people would know about that?

**Dr MacMillan:** Within Dr Kovacs's area there are three or four people who assist him in the preparation of profiles and the accumulation of the package necessary for sending up the line and on to the MRC. Then it would go to presumably the secretary of the director of the branch. The secretary would provide it to the director for review and signature if she agreed with it. The director of the branch then would send it on to my secretary and I would review it to co-sign the document before it went on to the assistant deputy minister, Dave McNaughton, in his capacity as general manager of OHIP. He would then send it directly to Dr Roy Beckett, associate registrar of the college.

At the college—I am not free to speak precisely, but I am aware that a number of people review the documents there in order to assimilate and prepare the material for the

review committee to decide whether or not an inspection is made. There would be a number of secretaries, registrars and personnel, along with I suppose the elected or appointed people on the committee who would have knowledge by that time that a particular physician had been referred.

Following that, an inspector or inspectors, one or two at the most, I understand, would be asked to go and visit the doctor and would make telephone calls and communicate with the doctor or the doctor's staff with respect to their attendance at the physician's office, which, I might add, I believe often includes some discussion with a physician's employees with respect to billing practices, inasmuch as many physicians are a little away from some of the billing habits and patterns and that is left to management staff.

To add to that, although this is very unofficial, but the committee may be interested in this from other witnesses, there is a general feeling among the profession that it has never been a very critical thing, in a doctor's career or in his life, to have the knowledge of his referral made before the committee among his colleagues. Indeed, I have had experience with doctors coming into the coffee lounge saying: "Guess what? I got a letter from the MRC. They're going to come and check me out." The degree to which that is even held to be confidential by physicians who are affected is quite variable. But I have no knowledge of any particular case; I am just speaking in generalities.

Indeed the OMA, of which I am a past president, often was requested to represent physicians in their dilemma in the investigation, and in particular in their review, when they had to go before the medical review committee. So the OMA has acted as the agent for its members whenever they have requested representation. More recently, in the last month or two, I have noted that the Canadian Medical Protective Association is now offering to do that role as part of its services to physicians when they are in legal trouble.

**Ms Jackson:** So at the end of the day—I am just counting up what you said—it sounds like about 10 people in your division might know, including the secretaries of the people who are involved; an indeterminate number, but clearly several people within the medical review committee; inspectors if inspectors are sent out; office personnel to the extent that they may become aware of it, plus whoever may happen to learn of it if, as you understand, doctors sometimes share the information somewhat casually.

**Dr MacMillan:** Yes.

**Ms Jackson:** I take it, from the comment that doctors sometimes sort of chat about this in the coffee lounge, that the review process per se is not always considered to be one of particular stigma from the point of view of the doctors whom you have had experience with.

**Dr MacMillan:** In many cases that is the case.

**Ms Jackson:** It is sort of like a tax audit, is it?

**Dr MacMillan:** I would say it is much more like that than some type of charge before the courts.

**Ms Jackson:** Within the ministry, though, the existence of this kind of investigation would be a piece of confidential information that would be protected under the Health Insurance Act and the freedom of information act.



**Dr MacMillan:** Yes.

**Ms Jackson:** Within the medical review committee, do you know in general whether there are any statutory constraints on the confidentiality of that process?

**Dr MacMillan:** I think they are under the same act, since the medical review committee is specifically defined within the Health Insurance Act and the duties of section 38 apply to that committee as equally as they apply to us.

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**Ms Jackson:** Dr MacMillan, let me turn then to the question of the threshold or framework agreement that you have made reference to earlier in your testimony. I am going to ask you, sir, to review some elements of that agreement for the committee so that they can understand what its implications are in terms of the issues before us.

I think it might be helpful, Mr Chairman, if the committee members could have in front of them a document that is entitled Sudbury Package, December 5, 1991. That will be—

**The Chair:** Exhibit 7.

**Ms Jackson:** Exhibit 7, Mr Chairman? Thank you.

**The Chair:** I am sorry, it is exhibit 8.

**Ms Jackson:** Dr MacMillan, I understand this was a package of material put together in connection with a visit by certain ministry officials to Sudbury on December 5, 1991.

**Dr MacMillan:** Yes.

**Ms Jackson:** And all of the information that is contained in it is public, not confidential.

**Dr MacMillan:** Yes.

**Ms Jackson:** This package includes, as an appendix to a speech by the deputy minister, copies of the agreements reached between the government of Ontario and the Ontario Medical Association. Do those include the threshold or framework agreements you spoke of earlier?

**Dr MacMillan:** Yes.

**Ms Jackson:** When was that agreement made?

**Dr MacMillan:** The negotiations took place in early spring of this past year, culminating in a final signature on the agreement on June 4. After a bit of a stormy session through the medical professions branches, the agreement was retroactive to April 1, 1991.

**Ms Jackson:** Dr MacMillan, can you describe in general terms for the committee how the threshold agreement works? What is the threshold and how does it operate?

**Dr MacMillan:** There are in fact two thresholds that we are talking about with this agreement. I am going to be very brief on it because I think if you want more detail it is in writing, and also Dr LeBlanc, who has been even involved in the negotiations of the agreement, will be here to give evidence.

But essentially and simply, there are two thresholds. One is a global threshold which for the first time when the utilization, or the demand for services results in the utilization, goes over a certain predetermined level, the profession will participate equally with the government. That means that for the first time the government is getting closer to

being able to budget the OHIP vote instead of looking at what happened at the end of the year after the fact. But as well as that, individual physicians can now face a threshold. The agreement calls for the reduction of a physician's fees by one third after the physician has reached \$400,000 of income paid by OHIP and faces a further reduction of two thirds of the fees originally allocated if the physician bills over \$450,000.

**Ms Jackson:** Are all of a physician's billings included in income for the purposes of deciding whether the physician is above or below the threshold?

**Dr MacMillan:** No, there are a number of sources of income that a physician would have both within OHIP and outside of OHIP that would be exempt. Obviously WCB payments, third-party insurance payments, non-insured benefits, cosmetic surgery and so on would all be exempt from the threshold because they are not part of the OHIP pool or vote of money.

Within the OHIP vote of money there was the determination that those services that we would determine as being technical fees would be exempt from the threshold. Technical fees are traditionally listed in the schedule of benefits that I have referred to and it would be easy for a physician to look at that book and determine whether or not a fee would be exempt from calculation of the threshold.

An example of that might be an electrocardiogram, where there is a technical fee for doing the electrocardiogram and supplying the paper and so on and the technician to do it; but the professional fee, which is the doctor reading, interpreting and treating the patient on the basis of the electrocardiogram, is the professional fee. Generally, if you think of technical fees as being listed in the schedule for services that have a significantly higher overhead than the customary examination of looking at your throat with a tongue depressor, it is X-rays, where there is a large technical fee, other types of diagnostic tests and so on. Because it is according to the schedule, there are many physicians, of course, who were upset that there were not more things included as technical fees. But that is the best way to describe it for you.

**Ms Jackson:** What are epilation services?

**Dr MacMillan:** Epilation was a code in the schedule of benefits, the electrolysis of hair, hair removal, that for certain women was a benefit up to November 15 of this past year. Epilation had been debated for many months and many years as a service that was supposed to be a benefit to a certain group of women and denied to another group of women based on rather non-specific diagnostic criteria such as testosterone levels. Women sometimes were lucky enough to get it as a benefit; the majority probably were not.

We had been one of the few provinces to allow this as a benefit, and I believe the figures went roughly from about \$16,000 as billable to OHIP by physicians who were engaged in this type of practice, up to about \$8 million last year as a result of the use and increasing use of this benefit. Because of a lot of controversy, advisory committees were held, including patients and physicians and electrologists and those who had a direct interest, and it was determined



by the minister towards the early fall, I believe, that the delisting of electrolysis was the only way to be fairly dealing with this problem and turning the job back to electrologists in the community, who for a long time had advocated such a change.

**Ms Jackson:** So it ceased to be listed as an OHIP service when?

**Dr MacMillan:** It ceased to be listed as a service on November 15, 1991.

**Ms Jackson:** And was it at any point included in threshold income?

**Dr MacMillan:** Can I preface the answer to that question by saying, a number of services that physicians and in fact those who represented them, the Ontario Medical Association, felt should be technical fees, indeed in the schedule were not technical fees. We had a major meeting with the Ontario Medical Association in order to come to some consensus on what should be defined more fairly for purposes of the threshold, and it was decided that although epilation, the electrolysis code, was not in the schedule as a technical fee, we would consider it such, and retroactive to April 1, 1991, any income earned by a physician who is engaged in electrolysis, those fees would not be taken into consideration in the calculation of his or her threshold.

**Ms Jackson:** Under the framework agreement, what physicians are exempt from the threshold, or what income is exempt from the threshold?

**Dr MacMillan:** The agreement called for two sections of the agreement. One—and I am not quoting from it—implied that physicians who are engaged in the underserved area program would be exempt from calculation of the threshold. So, never mind whatever their professional technical fees; they were exempt. The minister defined that in the strict sense those physicians who were enrolled and signed up in the underserved area program, which I can describe if you wish, were exempt.

**Ms Jackson:** Just briefly, what is the underserved area program?

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**Dr MacMillan:** They were exempt, but physicians who were no longer signed up, even though the specialty might be determined to be underserved, would not be exempt.

A number of years ago, a long time ago, in order to attract physicians to the north, in addition to the physician being able to bill the fees—which of course are the same fees that a physician would bill in southern Ontario—the government offered incentive grants which, although there are variations, in general is a \$40,000 tax-free grant paid over a four-year period, as long as the physician remains in that particular service and specialty in that location in the north. It has been reasonably successful in augmenting the ratio of physicians to population in the north, and indeed in many areas we have no longer had to provide the incentive because the physicians have remained and do provide those services in the north.

There are physicians in that four-year period who, by virtue of this agreement, it was deemed were exempt; and

there are physicians, of course, who may have come up there on the underserved area program who are no longer in it; or there may be older physicians who were there before the incentive grants were even available. I mention that because obviously those who were lucky enough to be deemed to be in the program who could escape the threshold, they were quite happy. There was extreme discontent on the part of many physicians who interpreted possibly, and in our view inappropriately, the fact that they may be exempt because they were in an underserved designated specialty, and yet they were not under this program where the tax-free grant was being made.

In addition, there was another component to the agreement that you will see in the agreement within the package, and that allowed for the minister and certain specialty or geographic areas to have the prerogative to extend the exemptions. On October 2, Frances Lankin announced the decision to—

**Ms Jackson:** Are you referring now, Dr MacMillan, to the decision to end the exemption?

**Dr MacMillan:** No, I am referring to the decision by the minister and her communication to the profession that there would be no further exemptions allowed under section 2 of the agreement. I believe it was about November 13.

**Ms Jackson:** Those communications are found at the back of this package on November 13. Is that right?

**Dr MacMillan:** Yes.

**Ms Jackson:** Just to tie off the exemptions—and I ask the committee members to bear with me on this because it will be clearer later why this is worth threshing through—under the underserved area exemptions, in addition to people who were on the four-year \$40,000 grant, are there any other people who have a portion of their income exempt from the threshold?

**Dr MacMillan:** Yes, there are physicians in southern Ontario and indeed in northern Ontario who travel—usually for a day or several days—to an underserved area in the north, and are paid a grant on a daily basis. That income generated through that service to underserved areas was also deemed to be exempt, so we have in summary only two groups of physicians who would be exempt from the threshold, other than what they could exempt from their technical fees: Group 1 was the group on the \$40,000 grant program and still receiving that grant money, and group 2, indefinitely those who were serving in designated underserved areas, physicians either from the north or from the south who travel to the north.

**Ms Jackson:** In this package, Dr MacMillan, there is a list two thirds of the way through that is headed Specialists on Program. Could you turn that up for a moment please?

**Dr MacMillan:** Yes.

**Ms Jackson:** Have you got that section?

**Dr MacMillan:** Yes.

**Ms Jackson:** And that shows, as I understand it, Dr MacMillan, a list of the specialists who are in the underserved area program in the sense that at least up until the 1991 year they were on this four-year \$40,000 grant.

**Dr MacMillan:** Yes.



**Ms Jackson:** By way of example, if you flip over to the pages with the Ks on them, we have on page 6 a Dr Kosar who is shown as being an ophthalmologist in Sudbury. It shows, under the column "Date Support," 01.07.90. I take it that means that Dr Kosar started to get a grant on that day.

**Dr MacMillan:** Yes.

**Ms Jackson:** Since his grant runs for four years, as is noted in the last column, he is still on the grant.

**Dr MacMillan:** Yes.

**Ms Jackson:** I take it from what you have said that you could tell from this that Dr Kosar would not be subject to the threshold.

**Dr MacMillan:** Yes.

**Ms Jackson:** Can you tell from this what Dr Kosar's income is?

**Dr MacMillan:** No.

**Ms Jackson:** If you look over earlier on page 5 there is a Dr Hollingsworth in Sudbury, an internist whose grants started on 07.06.88. I take it, then, Dr Hollingsworth would not be subject to the threshold.

**Dr MacMillan:** That is correct.

**Ms Jackson:** But you could not tell from this what Dr Hollingsworth's income is?

**Dr MacMillan:** No.

**Ms Jackson:** If you flip back, there is a Dr Donahue on page 4 who is a dermatologist whose grant began on 31.08.87. It is shown, in the grant column, nil in 1991. Do I take it from that that Dr Donahue's grant ran out or came to a conclusion four years after it commenced, during 1991?

**Dr MacMillan:** Yes.

**Ms Jackson:** Can you tell from this when this grant ran out or came to a conclusion?

**Dr MacMillan:** It is, you know, a four-year period and it started on August 31. It would appear to run out by September 1, 1991.

**Ms Jackson:** So for the period up to the end of August of 1987 Dr Donahue's income would not be subject to the threshold and afterwards it would.

**Dr MacMillan:** That is correct.

**Ms Jackson:** Can you tell from this what Dr Donahue's billing income is?

**Dr MacMillan:** No.

**Ms Jackson:** Now, if you flip over further in this package, Dr MacMillan, there is a set of culled cases and it appears under the heading "Impact of Threshold Reductions." I take it these are intended to be illustrative of the impact of thresholds on different kinds of practices.

**Dr MacMillan:** Just wait until we get the document. Is that the bulletin you are talking about?

**Ms Jackson:** We are still in exhibit 8 and it is entitled "Impact of Threshold Reductions." It seems to be found sort of 15 pages from the back of the package—case 1, case 2, case 3, etc.

**Dr MacMillan:** We may be deficient in our package.

**Mr Page:** We are not getting directly your exhibits which I asked to be sent around. So we are working from our own. If we got the exhibits that were given to the members—

**Ms Jackson:** We ought to be able to remedy that quickly. It might be a problem.

**Mr Page:** Our exhibits are usually consistent with your exhibits.

**Ms Jackson:** Just do not tell me we have to go back and do this whole afternoon over again.

**Mr Page:** No.

**Ms Jackson:** Do you have that yet, Dr MacMillan?

**The Chair:** Seventh page from the back.

**Dr MacMillan:** Is this case 4?

**Ms Jackson:** Mine is 12 pages from the back—case 1, case 2, case 3, case 4.

**Dr MacMillan:** Yes, okay.

**Ms Jackson:** Got it?

**Dr MacMillan:** I have it.

**Ms Jackson:** That illustrates the impact of the threshold on different kinds of practices?

**Dr MacMillan:** Yes. Can I allow a word of explanation? This material was prepared for us to go to Sudbury to assist everybody understanding this very complex area. Because of the nature of information in here and figures and so on, we specifically took it to the coordinator for freedom of information to be absolutely certain everything that we were given was public information, which it was. We made that extra check.

The figures that you see before you here were drawn by my staff on the basis of examples in the south of Ontario, not in the north, and actually on the basis of only seven months' billings. So although they are used to reflect what might happen for one particular doctor's income, as an example, over a period of a year, indeed there are some actual figures in here from physicians' practices in the south over a seven-year period. It is simply to illustrate the ratio on average types of practices, between that which is vulnerable to the threshold and that which is exempt and the type of gross billings that would result in the type of net billings that would be received.

**Ms Jackson:** Why did you go to the south for your actual examples?

**Dr MacMillan:** So that nobody would make the accusation that we picked off someone in the north when were going to Sudbury.

**Ms Jackson:** Now, you have said that as of November 13 this business of the possibility of exemptions by specialty and by region was cut off. Can I take you, then, back to the fall of 1991, in particular the October-November period? Can you describe for the committee reaction of the medical community in Sudbury, first of all, to the threshold agreement?

**Dr MacMillan:** Well, I guess it was militant, to say the least. I, as many others, first became aware of it in the press, although we had had a large number of letters from



physicians who either were affected or thought they were going to be affected from this threshold agreement.

**Ms Jackson:** Sorry, I am still listening.

**Dr MacMillan:** Okay.

**Ms Jackson:** After the end of the exemptions was dictated at the middle of November, did that add to the feeling in the north?

**Dr MacMillan:** I think there was a certain degree of expectation that a more liberal approach would have been given to the definition of "underserviced area;" and physicians who were exempted, who happened to be on the \$40,000 grant, would be sitting beside physicians who might be working just as hard who would not be exempt because they did not have the fortune of having another \$40,000 tax-free dollars. So there was a good deal of unfairness believed by the physicians in the decision as to who gets and who does not, and yet, as I said earlier, the government was following what most people, including the Ontario Medical Association, I believe, believed to be the interpretation of that section.

The north has always been in the medical community much more open and unified and aggressive and, in many cases, often feeling a bit hard done by by their medical colleagues in the south. Indeed, I am told that the OMA agreement itself—of about 65 district societies in the province, the medical association from Sudbury was the only one that opposed the agreement. So they were already primed to take exception to the administration of the agreement, and it was in that environment that I made some steps to try to deal with them in October, by phoning the president of the Sudbury and District Medical Society to see if I could meet with them to discuss the implications of the agreement.

**Ms Jackson:** Dr MacMillan, in the course of being aware of this militancy in the north and the discontent among doctors in Sudbury, did you become aware of a Dr Donahue who figured in this opposition?

**Dr MacMillan:** Yes. I wonder, before we get into that, if we could have a break, Mr Chairman, for maybe 10 minutes.

**The Chair:** Yes, if that is your desire, I will have a recess for 10 minutes. We will come back at a quarter after 4.

The committee recessed at 1604.

1622

**The Chair:** We will now resume questioning by Ms Jackson.

**Ms Jackson:** Dr MacMillan, I have put before you a collection of articles that appeared in respect of the opposition to this agreement and certain stances taken by Dr Donahue in the period, largely in the fall of 1991. Were you generally familiar with the positions being taken by Dr Donahue as set out in these newspaper articles?

**Dr MacMillan:** Yes, I just got these newspaper articles now, so I have just browsed through them. I have seen a great deal of press on this issue. I think my file is thicker than this. I was certainly very much aware of the issue as it was heating up about the threshold issue all over Ontario, but in particular in the north.

**Ms Jackson:** And in particular you were familiar with the general nature of the positions being taken and the information provided by Dr Donahue, as is set out in these articles.

**Dr MacMillan:** Yes.

**Ms Jackson:** Mr Chairman, could we mark those articles as exhibit 9?

I want you to please be careful, Dr MacMillan, not to tell me anything that would constitute what you well know to be personal information about Dr Donahue, but can you tell the committee whether prior to this fall period you had had any dealings with Dr Donahue?

**Dr MacMillan:** I had no personal, direct dealings with Dr Donahue. However, I did receive a letter from him in the past year as it related to epilation and his thoughts on the epilation issue.

**Ms Jackson:** That is the issue you just described for us a short while ago.

**Dr MacMillan:** Yes. It was received on May 11, 1990. It goes away back.

**Ms Jackson:** So to that extent you had had dealings with Dr Donahue in the past.

**Dr MacMillan:** Yes, but I had never talked to him or, I believe, ever written to him.

**Ms Jackson:** I am next going to ask you to look at a broadcast on MCTV, channel 4, Sudbury, dated November 8, 1991, which is an interview of Dr Donahue, and ask you if you became aware of that broadcast around the time that it was made.

**Dr MacMillan:** Is this an exhibit?

**Ms Jackson:** It is on its way down to you as an exhibit, yes.

**Dr MacMillan:** This was on November 8?

**Ms Jackson:** Yes, are you familiar with the broadcast by Dr Donahue on that date?

**Dr MacMillan:** Yes, I am.

**Ms Jackson:** And just generally, what was the issue that Dr Donahue was addressing on that day?

**Dr MacMillan:** The issue was the fallout from the removal of epilation, which would have occurred the following week, and the services to his patients in the north.

**Ms Jackson:** Could we mark the transcript of that interview, Mr Chairman, as exhibit 10? On the particular copy that you are getting, Dr MacMillan, you will see there are notes on the left-hand side. Are those notes yours?

Interjection.

**Ms Jackson:** That is all right. In fact, if the notes are not there that is even better because I was just going to get you to describe that they were not your notes and you did not know anything about them, but if they are not there we can skip that question.

I am next going to ask you to look at a transcript of a broadcast, again by Dr Donahue, on CBC in Sudbury on November 13, 1991, and ask you if you became aware of that broadcast on or around the time it was made.

**Dr MacMillan:** Yes, I am.



**Ms Jackson:** Do you recall when you first became aware of that broadcast?

**Dr MacMillan:** I cannot recall precisely, but I believe it was the same day, November 13th.

**Ms Jackson:** Okay. In general terms, do you recall what was the subject matter of this interview?

**Dr MacMillan:** Yes, I recall it and I also read it again this morning.

**Ms Jackson:** Can you briefly tell the committee what the nature of the broadcast was?

**Dr MacMillan:** Yes. That particular broadcast was an interview with Dr Donahue about a totally different issue, and that was the impact of the thresholds on health care in the north, in particular in Sudbury and in particular as it related to the practice of dermatology.

**Ms Jackson:** On November 13th do you recall whether you were in your office in Kingston?

**Dr MacMillan:** No, I was not. I was at the Sunnybrook Medical Centre for the second meeting of the joint management committee between the Ontario Medical Association and the government. The agreement also calls—for the first time a joint team between the government and the OMA would sit down and look at utilization and other issues, including of course the impact of the threshold and the way it should be administered.

**Ms Jackson:** I understand that subsequently you have become aware and have seen copies of some e-mails that originated in your office in Kingston in relation to this broadcast while you were away.

**Dr MacMillan:** Yes, electronic mail is passed daily of course between Kingston and other offices of the Ministry of Health on the government electronic network.

**Ms Jackson:** And can be printed up into hard copies.

**Dr MacMillan:** Yes.

**Ms Jackson:** You have seen both electronic and hard copies of the e-mails that originated in your Kingston office on November 13th.

**Dr MacMillan:** Yes.

**Ms Jackson:** Can you confirm that they contain the following: first, an e-mail that is two pages long sent at 11:41 am from William Teatero?

**Dr MacMillan:** Yes.

**Ms Jackson:** It was sent to Diane McArthur in Toronto?

**Dr MacMillan:** Yes.

**Ms Jackson:** Who is Diane McArthur?

**Dr MacMillan:** Diane McArthur is the executive assistant to Dr Eugene LeBlanc.

**Ms Jackson:** That was a two-page e-mail?

**Dr MacMillan:** Yes.

**Ms Jackson:** It mentions Dr Donahue's name.

**Dr MacMillan:** Yes.

**Ms Jackson:** It makes reference to the details and amounts of his billings.

**Dr MacMillan:** Yes.

**Ms Jackson:** There is nothing in that e-mail that says Dr Donahue's billing is being reviewed in terms of the practice you have described earlier for the committee.

**Dr MacMillan:** By the medical review committee?

**Ms Jackson:** Yes.

**Dr MacMillan:** Yes, there is no reference to the medical review committee in the document.

**Ms Jackson:** Or to the existence of an ongoing review of his billings within your ministry.

**Dr MacMillan:** No.

**Ms Jackson:** All of the information in that two-page e-mail would be personal information, as that term is known in the freedom of information act and as we have been using it today.

**Dr MacMillan:** Yes.

**Ms Jackson:** In addition to that, you can confirm that at 2:20 in the afternoon of that day a second e-mail was sent from William Teatero to Diane McArthur.

**Dr MacMillan:** Yes.

**Ms Jackson:** Which provided some short additional information with respect to Dr Donahue's billings.

**Dr MacMillan:** Yes.

1630

**Ms Jackson:** Lastly, that at 3:55 pm that afternoon, a further e-mail was sent from William Teatero to Denise Allen and to Maurice Jones, copied to Bob McBride and attaching the e-mail that we referred to earlier, of 11:41.

**Dr MacMillan:** Yes.

**Ms Jackson:** That last e-mail was essentially just forwarding the earlier e-mail?

**Dr MacMillan:** Yes.

**Ms Jackson:** It did not contain any additional information.

**Dr MacMillan:** That is correct.

**Ms Jackson:** In addition, that at least one of the hard copies of that e-mail that has been found within your division contains a note from one Peter Quinn to Dr Kovacs.

**Dr MacMillan:** Yes, a handwritten note over top of the memo.

**Ms Jackson:** Tending to suggest that it was seen by both Peter Quinn and Dr Kovacs.

**Dr MacMillan:** Yes.

**Ms Jackson:** Who is Denise Allen?

**Dr MacMillan:** Denise Allen was a communications officer in the Ministry of Health who, among other duties, was involved often in the preparation of briefing notes and priority briefing notes.

**Ms Jackson:** Where is she located, or was she at this time?

**Dr MacMillan:** She reported to the director of communications, Rhea Cohen, in the communications branch.

**Ms Jackson:** In Toronto?

**Dr MacMillan:** Yes.

**Ms Jackson:** And Maurice Jones?



**Dr MacMillan:** Maurice Jones serves a similar function and is in the same division.

**Ms Jackson:** Who is Bob McBride?

**Dr MacMillan:** Bob McBride works as my employee. He was in the position of acting director of the provider services branch, a position he had held for only five days because of the sudden illness of the director of the branch.

**Ms Jackson:** I apologize, Dr MacMillan, if I have asked you this question. I am just not sure if we have established if Diane McArthur, at the material time, was the executive assistant to Dr LeBlanc.

**Dr MacMillan:** Yes.

**Ms Jackson:** You have had occasion, as I understand it, more recently than November 13 to prepare a note of some of the events that took place on that day and the next.

**Dr MacMillan:** Yes.

**Ms Jackson:** Could I ask the clerk to distribute a copy of it to the members of the committee? This is a note that is headed, "Chronological events prior to November 13," and then it carries on. Mr Chairman, could I ask that this be the next exhibit, number 12? Who prepared this note, Dr MacMillan?

**Dr MacMillan:** I did.

**Ms Jackson:** When?

**Dr MacMillan:** On December 11, 1991.

**Ms Jackson:** Why?

**Dr MacMillan:** Because at that time this issue was heating up, so to speak, and in my years as a coroner and working with police I found it always to the advantage of everybody to always document their notes as to their memory at the time, rather than waiting for three or four months down the road. So I not only did it myself, I told other people who were involved with this that I thought it would be a good idea.

**Ms Jackson:** The note contains, under the date Wednesday, November 13, a description of certain things that took place in the Kingston office. I take it that is not based on any personal knowledge that you have.

**Dr MacMillan:** Direct personal knowledge?

**Ms Jackson:** Yes, you were not there.

**Dr MacMillan:** No, that is correct.

**Ms Jackson:** You were not in communication with your office on that day about any of the matters that are described here?

**Dr MacMillan:** Not that I recall.

**Ms Jackson:** We know that on that day you were in Toronto, and you have mentioned that the director of the provider services branch had recently departed on an illness. Was there anybody else who would ordinarily be in the office and would deal with information requests who was not there that day?

**Dr MacMillan:** Not necessarily. The type of requests we will hear about would very likely normally have been channelled, as I said earlier, between the person who was charged with writing up or retrieving the material and the director of the branch to approve the content and forward

it. In a priority briefing, if it were in the usual manner and following policy, it would have come through my office or whoever was standing in for me on that day or indeed phoning me at the number where they knew they could reach me and over the telephone getting my approval of such a briefing.

**Ms Jackson:** Had it been a priority briefing, do I take it Ms Fleming would also have been involved?

**Dr MacMillan:** She would have been involved in the priority briefing almost certainly, and if not, the other person I mentioned, Jacqui Heath, who is always there to fill in if Mary Fleming were not available.

**Ms Jackson:** Was Ms Fleming in the Kingston office on this day?

**Dr MacMillan:** She was not there in the morning; she was there in the afternoon.

**Ms Jackson:** You mentioned that in some circumstances, I think whenever there was a priority briefing, it also would be signed off by Dr McNaughton?

**Dr MacMillan:** Yes.

**Ms Jackson:** Was he in the Kingston office that day?

**Dr MacMillan:** No. I should explain that the joint management committee has the very senior level of people from the OMA and also the very senior people from the Ministry of Health, as we embark on this new trip. The deputy minister, the general manager of OHIP, Dave McNaughton, Dr Eugene LeBlanc and I, along with other members of the ministry and other nominees from the ministry, were all at Sunnybrook Medical Centre, McLean House, for this second, day-long meeting with the Ontario Medical Association.

**Ms Jackson:** Do we have, in this note of exhibit 12, all that you have subsequently been told about what took place in the Kingston office on November 13?

**Dr MacMillan:** I believe that is it in brief, yes.

**Ms Jackson:** All right. When did you first learn of these e-mails?

**Dr MacMillan:** I now recall that, slightly different than my note would imply, the first notification of such an issue was when Maurice Jones, the communication officer whom I later found out was involved in the preparation of a briefing note, came to me in Dave McNaughton's office where I had arrived the next morning, I believe about 8:30, and handed me a memo, an electronic memo headed by Denise Allen, which was signed by Maurice and Denise. This was a memo that gave a certain outline as to the request for information and the preparation of a briefing note on this particular issue. Attached to that sheet, which I presume had been produced on the machine of Denise Allen and then simply printed, were the, I believe, two interviews with Dr Donahue with the press: one, the television; one, the radio of November 8 and November 13. The last document attached was the two-page memo you referred to earlier, the e-mail sent by William Teatero to Toronto.

**Ms Jackson:** Mr Chairman, could I ask that the one-page covering memorandum be distributed to the members of the committee?



**The Chair:** That will be marked as exhibit 13.

**Ms Jackson:** Do you have a copy of that, Dr MacMillan?

**Dr MacMillan:** Yes.

**Ms Jackson:** What happened when you were given that by Maurice Jones?

**Dr MacMillan:** I looked at it and immediately became upset that the contents of the last two sheets of the package contained information that I felt was not wise to be passing to other personnel in the ministry in order that a briefing note be prepared. I told Mr Jones, "Thank you very much." I noticed that the document had been sent to a number of other people and I was concerned that I should retrieve it. I went to Dr LeBlanc's office shortly thereafter and further events transpired there.

**Ms Jackson:** Can you tell the committee what happened there?

1640

**Dr MacMillan:** I was to see Dr LeBlanc anyway again about the threshold issues, and I immediately referred to the package that had been handed to me and the issue was discussed. I remember being a little upset, surprised, and immediately ordered—strongly suggested—that people get that document, that e-mail, and give it back to me to destroy it; who had it. Then I immediately picked up the phone to ask my acting director who gave authority to provide that kind of detail about a physician to staff in the Hepburn Block, and my acting director took responsibility for it, but—

**Ms Jackson:** Who was the acting director?

**Dr MacMillan:** Robert McBride.

**Ms Jackson:** This is the man who had been acting director for five days when this happened?

**Dr MacMillan:** Yes.

**Ms Jackson:** In that conversation, did he tell you anything more about what had happened other than what we saw on the front page of exhibit 12?

**Dr MacMillan:** He simply said that in his capacity, the office was requested for briefing material about a particular physician because of public concerns expressed about the threshold and how it impacted on this physician and, "Would you please forward as soon as possible any information in order that we can become more informed about the issue." That is how I understood the request was made to him and Mr Teatero.

Mr Teatero then, being a more experienced employee—I believe over 10 years with the ministry—retrieved and went to retrieve information of any nature he could find concerning the issue and the physician, and that was approved, unfortunately, to be sent by the acting director and went to the person you have identified, Diane McArthur, executive assistant at Dr LeBlanc's office.

**Ms Jackson:** In addition to the people who received the original e-mail or e-mails, whom you have identified, we see on exhibit 13 that copies were sent to Paul Howard. Who is Paul Howard?

**Dr MacMillan:** Paul Howard is with the minister's staff, the Minister of Health.

**Ms Jackson:** What position does Paul Howard fulfil in the ministry staff?

**Dr MacMillan:** I am not sure of the exact title, but it is in communications.

**Ms Jackson:** Within the ministry, or as a political—

**Dr MacMillan:** The minister's staff. Frances Lankin's staff person involved with communications.

**Ms Jackson:** Then the next addressee of this e-mail is Tiina Jarvalt. Who is Tiina Jarvalt?

**Dr MacMillan:** Tiina Jarvalt is the executive assistant to the deputy minister, Michael Decter.

**Ms Jackson:** And Eugene LeBlanc is the Dr LeBlanc you described and Dr MacMillan is yourself. Who is Mary Doyle?

**Dr MacMillan:** Mary Doyle works in the deputy minister's office.

**Ms Jackson:** Mr Decter.

**Dr MacMillan:** Yes.

**Ms Jackson:** What position does she have there?

**Dr MacMillan:** Administrative assistant.

**Ms Jackson:** Did you have any conversation with anyone on the 14th as to why this e-mail was sent to the people who are shown on exhibit 13?

**Dr MacMillan:** Yes. I tried to recall precisely the people who were in Dr LeBlanc's office when I expressed my views. It was definitely Dr LeBlanc. I believe Diane McArthur was there. Denise Allen may have been there. I believe Maurice Jones was there, and a little later I believe Helen Ambrose, also with the communications branch, came. I do not recall seeing anyone from the minister's staff there, but I do recall requesting the answer to whether or not anybody on the minister's staff had been in receipt of the memo.

**Ms Jackson:** You would have known, would you not, it having gone to Paul Howard, that it had gone to someone on the minister's staff?

**Dr MacMillan:** I am not sure when I recalled this, but I learned indeed that it did not go to Paul Howard. As I indicated, it was my understanding that this memo was not forwarded on the electronic mail but rather created on the computer and printed in the communications branch and hand-delivered to persons who could receive it. It is my understanding—you can corroborate—Paul Howard was away for a couple of days and did not receive it. It is also my understanding, but you will have to have it more direct, that Larry Corea, also of Frances Lankin's staff, did receive it.

**Ms Jackson:** When did you learn Paul Howard had not?

**Dr MacMillan:** I cannot recall. I heard he did not, I believe, that morning—I heard he was away—but I cannot remember.

**Ms Jackson:** When did you learn Larry Corea did?

**Dr MacMillan:** I do not recall precisely. I do not think I was ever certain that anybody did on the minister's staff. I must admit that in foreign territory up on the ninth



floor of the Hepburn Block I simply expressed a very strong position of a senior executive director and I relied on Dr LeBlanc, who was responsible for the preparation of the briefing note and who I understood agreed entirely with me and would take every effort to retrieve the document. I did not do a personal follow-up of every secretary, every person named on the memo or everyone who was in the process of trying to prepare notes to be of value to the minister.

**Ms Jackson:** Do you know or have you ever been advised that anyone other than the people you earlier identified as being addressees or copies of the original e-mail, or the people who are shown as the addressees or as getting copies of exhibit 13, received a copy of the e-mail? When I say the "e-mail" I am always referring to the one that originated in your office on the 13th.

**Dr MacMillan:** No, I am not certain whether anybody else received or had involvement. I only know of the names I have mentioned and the names you have mentioned. Recognizing electronic mail and then the subsequent printing of it, obviously the Ministry of Health is very large and if someone were careless or chose to show someone else, there may have been somebody else involved in this preparation. I just do not know, with my office being in Kingston.

**Ms Jackson:** You said you are not certain. Has anybody ever said to you or given you reason to think that anybody other than the people listed as addressees received a copy of the e-mail?

**Dr MacMillan:** Not until December 10.

**Ms Jackson:** We will come to that in due course.

In the conversation in Dr LeBlanc's office, did you gain any further information as to why the e-mail had been sent to this group of people in the first place?

**Dr MacMillan:** I clearly understood it was for the preparation of a briefing note. By then I was fully aware of the most recent press involvement of Dr Donahue, and indeed I agreed about that time to be the ministry spokesperson for a Sudbury Morning North program to be aired the following morning, and in which I participated with respect to the issues raised by Dr Donahue.

**Ms Jackson:** The briefing note was to go to whom and for what purpose?

**Dr MacMillan:** I am not certain that I understood it was anything other than a briefing for the minister at that time. I some time later realized it had not sprung out of the morning briefing session that is described in the priority briefing booklet you have seen. So I only knew that a briefing was necessary. The issue was being raised in the public eye. It was quite likely that the minister or others would be asked as to the proper ministry response, and it seemed to me quite natural and obvious that information would be needed in order that a note be prepared, and indeed one was finally prepared which was very satisfactory.

**Ms Jackson:** Apart from giving the instruction or the view that you did in the meeting with Dr LeBlanc and the others you have identified, did you take any other steps to see that copies of the e-mail were erased or destroyed or collected up in Toronto, let's start with?

1650

**Dr MacMillan:** No, not in Toronto. People came to me over the next short period and said, "Yes, we've got the copy back; we've destroyed it," and I just believed that everybody sincerely supported my decision. In fact, I cannot recall who had one, but someone brought in their copy that had so many black lines through it that there was more struck out than was still present and readable. So it was obvious that other people were trying to put this together without the confidential information that was sent from Kingston.

**Ms Jackson:** Do you have any information for the committee as to who kept copies of the e-mail in Toronto?

**Dr MacMillan:** No, I do not, but let me tell you something technical. You can press a delete on your computer, and you can then press Y, if any of you have that system, and that means, "Yes, I really do want to delete it," so you press the second button Y and it goes into "waste-basket." One would think that that is gone from the computer, but it is still on the mainframe and it is still retrievable. So we exit it from our own computer system, but it is still available.

Having said that—which is quite far out—to my knowledge everybody, I believed, felt and agreed with me that it should be destroyed, and I had faith that they would. There would be no way I could walk around and go into every office and try to prove it to myself; I just went away that day believing people understood, agreed with me, and my task was done. In addition, of course, I made the message very clear to my staff in Kingston about the memo and, again, was confident that my message got through. But I did not follow up personally to check their desks.

**Ms Jackson:** Do you know, once an e-mail is deleted and goes into the waste-basket—let's just find out if you can tell us anything about that. Who can get it and for how long?

**Dr MacMillan:** Well, we have, again, in the security manual and other manuals, very strict procedures which we hopefully adhere to with regard to the destruction of paper mail. We of course recycle most of our paper that can be recycled, but any kind of files—

**Ms Jackson:** Sorry. When you described the waste-basket process, I thought you were talking about an electronic waste-paper basket.

**Dr MacMillan:** Well, I was, originally. Now I—

**Ms Jackson:** Okay. When it is deleted from the machine and it goes into the electronic waste-basket, for how long is it in the waste-basket, or do you know?

**Dr MacMillan:** I cannot answer that question.

**Ms Jackson:** Do you know whether anyone could pull it out of the waste-basket, and how?

**Dr MacMillan:** Those are good questions. I will get the answers for you for tomorrow morning. I just do not know that.

**Ms Jackson:** Okay. Now, you said you gave the message quite firmly to your staff in Kingston. Is that in the telephone conversation that you described with Mr McBride?



**Dr MacMillan:** Yes, and subsequent meetings, when I returned there the next morning.

**Ms Jackson:** When you returned, or at any time, did you learn whether anybody had a copy of the e-mail in Kingston, other than Mr Teatero, Mr McBride and the two people whom you have indicated wrote a note on the e-mail, Mr Quinn and Dr Kovacs?

**Dr MacMillan:** No, I do not believe that there was anyone else. I did not satisfy myself that there was anybody, but given the huge degree of information that is available there anyway, I was far less concerned about my own staff, even though this had happened, than I would be with unknown destinations in Toronto.

**Ms Jackson:** Because they have a lot of other confidential information that they have access to?

**Dr MacMillan:** A tremendous amount.

**Ms Jackson:** Did you ever learn whether hard copies of the e-mail remained in existence in Kingston?

**Dr MacMillan:** I was not very concerned about whether or not they were available in Kingston. I cannot say that that obsessed me. Again, people knew what was in the document who had read it, and I do not think that—

**Ms Jackson:** Dr MacMillan, I understand why it was not of concern to you, but could you none the less indicate whether you know whether hard copies remained in existence in Kingston?

**Dr MacMillan:** I cannot answer—

**Ms Jackson:** I have had you describe to some extent—

**Dr MacMillan:** I have a copy now. I have a copy and I gave you a copy. I think it is from a hard copy I had photostatted, but it might be off the machine itself.

**Ms Jackson:** You do not know where that came from?

**Dr MacMillan:** No. I can try to find out, if it is of importance.

**Ms Jackson:** All right. Could you, if you are able to, advise the committee tomorrow morning what copies you are aware of continued to exist after the 13th in hard or electronic copies in Kingston? Thank you.

Now, you indicated that once you had given the instructions that you had with respect to this original e-mail, another e-mail or briefing note was prepared. I would ask you to identify the briefing note that was subsequently prepared, dated November 14, 1991, 12:17: "Briefing Note: Delivery of Dermatology Services in Sudbury."

**The Chair:** That will be marked as exhibit 14.

**Dr MacMillan:** You are not passing that around?

**Ms Jackson:** I thought we were. I think we are.

**Dr MacMillan:** Yes, I just want to speak to what I understand to be the document.

**Ms Jackson:** Can you identify that as the briefing note you were earlier describing, Dr MacMillan?

**Dr MacMillan:** Yes, this is the final briefing note that was forwarded everywhere, I guess, within the ministry.

**Ms Jackson:** Do you know to whom it was forwarded?

**Dr MacMillan:** Well, it would go through a standard and routine dissemination to those who would have a bearing on this issue. It would go to the communications branch in case they had to, in their particular role, address the issue, to inquiries or to the press, and I believe it would have gone to the minister for purposes of informing her.

**Ms Jackson:** That briefing note, you can confirm, contains no identification of Dr Donahue or details of his billings?

**Dr MacMillan:** That is correct.

**Ms Jackson:** Now, you said, sir, that you then became a spokesperson for the ministry with respect to this issue and that you gave an interview. I am going to ask you to identify a transcript of that interview on December 15—pardon me, November 15—an interview, again CBC Radio in Sudbury, which was the program that had interviewed Dr Donahue two days before.

**Dr MacMillan:** Yes.

**The Chair:** That will be marked as exhibit 16.

**Ms Jackson:** Did you subsequently speak to Dr Donahue?

**Dr MacMillan:** Yes, I did.

**Ms Jackson:** And have you made a note of that conversation in general terms?

**Dr MacMillan:** Yes, I have.

**Ms Jackson:** And could you identify that note as one that is headed—

**Dr MacMillan:** "Confidential Notes Respecting Sudbury Visits."

**Ms Jackson:** When did you prepare that note, Dr MacMillan?

1700

**Dr MacMillan:** I prepared that note on December 21.

**Ms Jackson:** For the same reason as the earlier one?

**Dr MacMillan:** Yes.

**Ms Jackson:** And is the note entirely prepared by you?

**Dr MacMillan:** Yes.

**Ms Jackson:** You recount in the first paragraph a conversation, or did you say possibly two conversations, with Dr Donahue regarding his personal situation. Now, without telling us anything about his personal situation, can you just describe generally to the committee how that came about and what kind of conversation or conversations you had?

**Dr MacMillan:** Give me leave to be just a bit longer on this question, because I have to tell the committee that with my 12 physicians who constantly talk about issues with physicians, we became aware, of course, of a mounting and heated-up objection to the agreement, especially as it related to the threshold area. In particular, the press, as you have seen, had a few common spokespersons who often related their own particular information in the press.

I became concerned, I guess, as a physician. In order to try to make certain that they had factual information about their particular impact, I became concerned that Dr



Donahue's comments to the press, or alleged to have been given to the press, seemed to imply a misinformation on his part, a misinformation that went so far that I was shocked at the level of impact that he was alleging the threshold agreement would have. So I asked my staff to get for me something like: "Say, this Dr Donahue really seems to be hit by this thing. He's got to close his business, he says, in November."

So they got me information about his billings, about his epilation which, you know, he was involved with and about the allegations of how the threshold would impact, and I said to myself: "This is all wrong, from the newspaper. How come nobody is telling this guy?"

So I picked up the phone on November 28. Let me tell you I had already been in touch with the president of the Sudbury and District Medical Society saying: "You've got a real problem up there. Everybody's very upset. Why don't I come up to?"—I have to tell you this because I want to tell you that I had already arranged to come up with Dr DeBlacam, the president of the Sudbury and District Medical Society. So when I talked to Donahue, I knew that I was going to come up. I gave him information that I had about his particular situation. He said: "Well, thank you very much. I didn't know that. I didn't think that I was affected that way. This is new information to me. I really appreciate the call." I said, "Would you like to meet with me when I come?" He indicated that he would and that was the end of the conversation.

**Ms Jackson:** Now, I do not want you to speak about any of the other impacts on him of the threshold, but can I just ask you about the one that we did canvass that was publicly available? I take it that because he was on the underserviced area program until the end of August his income up until the end of that period would not have been subject to the threshold.

**Dr MacMillan:** He was not aware of that.

**Ms Jackson:** And you told him that.

**Dr MacMillan:** Yes.

**Ms Jackson:** Did you subsequently meet Dr Donahue?

**Dr MacMillan:** I went to Sudbury on December 5, at which time we anticipated we were going to meet with the Sudbury and District Medical Society, but it did not turn out quite that way. We had very little opportunity for interaction; it was much more of a demonstration than a meeting. Although I spoke for a moment with Dr Donahue, he did not indicate any desire to speak to me even though I was prepared to talk about his individual situation.

**Ms Jackson:** All right. Did Dr Donahue subsequently close his practice?

**Dr MacMillan:** To my knowledge he did, although I simply read that in the newspaper as well.

**Ms Jackson:** And then your note records, and you said you had indicated, that as a result of a conversation with Dr DeBlacam you would visit Sudbury. When did that visit take place?

**Dr MacMillan:** Just to be precise, can I tell you that I called him on Monday, November 18, and spoke to him

for about 12 minutes? Again, he appreciated my call, was very courteous on the telephone, wanted to respond positively to my suggestion. I spoke to him again on Tuesday, November 19, at which time we were again trying to arrange a suitable meeting, a meeting which originally had been planned and was postponed, he indicated, because they were going to widen the audience of the meeting. Of course, the widened audience included many other persons, an open town hall meeting with the press and cameras, and so on.

**Ms Jackson:** All right, but dealing first of all with the first visit, you record in these notes a visit to Sudbury on November 30.

**Dr MacMillan:** Yes.

**Ms Jackson:** And when did you go up to Sudbury?

**Dr MacMillan:** I went on 29 November.

**Ms Jackson:** And who was with you from the ministry, anyone?

**Dr MacMillan:** Dr LeBlanc and Mr David Belyea, who was the coordinator for hospitals in the north.

**Ms Jackson:** Now, you indicate that on the Friday evening there was a supper-hour meeting among the three ministry officials and someone from the Sudbury Memorial Hospital and his wife. During that conversation, was there any discussion of the financial circumstances of any individual physician in Sudbury?

**Dr MacMillan:** No personal information was disclosed.

**Ms Jackson:** Was there any discussion—

**Dr MacMillan:** We were talking about physicians in general and how they would be impacted by the threshold; and, of course, the reason why the CEO of the hospital wanted to meet with us was because some of his very staff were going to be affected by the threshold and he was giving us their side of their particular situation as he knew it and, of course, expressing the threatened withdrawal of services for cardiovascular care in Sudbury at his hospital. I did not give to them any information respecting the billings of any of the physicians on their staff.

**Ms Jackson:** The next morning you note at the bottom of page 2 that the three people from the ministry met over breakfast with Floyd Laughren, Shelley Martel and Sharon Murdock, and a member of Mr Laughren's staff. Do you remember who that was?

**Dr MacMillan:** No, I do not.

**Ms Jackson:** Was there any discussion during that breakfast meeting of the financial circumstances of any individual physician?

**Dr MacMillan:** No.

**Ms Jackson:** And then there was a meeting with the cardiologists?

**Dr MacMillan:** And the hospital personnel.

**Ms Jackson:** And the three politicians just mentioned?

**Dr MacMillan:** Yes, and a few other people including representatives from the Sudbury and District Medical Society. I believe there were about 17 people or so.



**Ms Jackson:** Was there any discussion in that meeting of the financial circumstances of any individual physician?

**Dr MacMillan:** Yes, there was, but it was all in generic terms. There was no revelation of to what degree OHIP was making payments to any individual physicians. Collectively, we are always able to give out information. We usually use a cell of four, or more commonly five, but it is always given in such a way that no individual physician's income could be extracted from that aggregate data.

I would like to make a correction. When I wrote my notes, I was trying to remember everything I could, but I missed out another member of the breakfast meeting and that was John Rodrigues, MP from Sudbury, who was very interested in the issues at hand. He had been a patient of the hospital, he was pictured in their annual report, and he was very concerned and worried about the threat to services, especially in the cardiovascular area in Sudbury.

**Ms Jackson:** Now, you then say in this note that documents of a sensitive nature were present in the briefcases of ministry officials, no such documents were taken out of the briefcases over the breakfast, and no one recollects any confidential information being requested. What sensitive documents were you referring to there?

**Dr MacMillan:** I may have gone beyond my memory at that time. I certainly had sensitive documents in my briefcase. I assumed because Dr LeBlanc was involved in many of the same issues with the same doctors—in fact, he often had more frequent interaction with individuals than I did—he may have had some information in his briefcase as well. I doubt whether Mr Belyea, who was solely involved on the hospital side, had anything of a sensitive nature.

1710

I had told you earlier that I had been attempting to meet Dr Donahue and he had expressed a desire to do that. But there were several other physicians, too, who talked with me and I looked at my telephone records and I remember why they are not there—because they phoned me. They phoned me to see what they were going to do, how their cash flow was going to be adjusted by OHIP, when they would be affected by the threshold, was the minister going to expand the exemptions. So there was this constant communication, not only with me but with Mr Teatero, whose main job is to deal with the threshold, and Dr LeBlanc.

So I took with me some financial data on individual physicians' practices, including Dr Donahue's, in order that I would be prepared to talk intelligently with them if I had the opportunity to meet with them. Unfortunately, on that weekend was the annual Ontario Medical Association bonspiel and I know that a number of physicians were out of town. Possibly there were other reasons why a meeting at that visit never came to fruition, other than with the cardiologists, of whom I also had personal billing information and who had also approached me by telephone to debate the issues.

**Ms Jackson:** So you did not meet with Dr Donahue.

**Dr MacMillan:** No, I did not.

**Ms Jackson:** Did you have occasion to refer to your confidential information with respect to Dr Donahue in conversation with anyone during that November 30 visit?

**Dr MacMillan:** No, I did not.

**Ms Jackson:** Last, on this visit you record at the middle of page 3 a lunch meeting with the three ministry officials and Shelley Martel to further explore solutions to this dilemma. You point out later on in that paragraph, "Discussions took place of a general nature, and inasmuch as Dr Donahue had made numerous comments and statements about his particular position, his plight was discussed in general terms as it related to the availability of dermatological services in Sudbury." What was said?

**Dr MacMillan:** I want to preface my remarks by saying that the very serious concern of the minister, Shelley Martel, was of course the threat of cessation of cardiology services. That is why we were asked to go up there. That is why we were asked to meet just prior to the hospital meeting, why we were asked to attend the meeting. In fact much of the meeting was to bring the minister up to speed, I guess, on a very complex area that involved physicians, and indeed patients, in her riding.

As a result of the meeting in the morning that lasted about three hours, and because of the detailed data and arguments made by the physicians, which again was very much a one-way presentation, we began talking in the hall, and it went on a few minutes about the general issues of the Sudbury Memorial Hospital and the cardiology threshold issue. We were almost on our way to get an airplane and we somehow decided to further the discussion over a sandwich, so we stopped at a restaurant. I would think we were not there more than half an hour because we were in a rush. We discussed primarily the cardiology services in general.

Dermatology, as you can see, had reached a very peak in Sudbury, with a very vocal dermatologist and the threat of closure of his office, the cessation of services certainly by a very busy dermatologist, what effect that would have on the community, how dermatology specialty services would be served in the Sudbury area, how the fly-in program worked, how the incentive program worked. It was definitely a discussion about dermatology.

Dr Donahue's name was definitely mentioned; I can recall it. I do not recall, and I have thought a lot about it immediately after this, about the extent of that conversation, and I do not feel in any way that we divulged any private or confidential information that would be seen as being in breach of the legislation we live under. I am so sensitive to that, having gone through personally the Evelyn Gigantes release of information. I am above that. I just do not believe that I could have, inadvertently even, slipped out something about an amount of income or any other matter relating to Dr Donahue.

**Ms Jackson:** Was there any discussion at all about the amount of Dr Donahue's billings that you can recall?

**Dr MacMillan:** No, I do not recall discussing, again, the degree to which he was billing. Remember, please, that he has indicated that he must close because he is going to go bankrupt in November. Now, that is only eight months into the 12-month year. Recognizing with many physicians that maybe half of their billings are technical fee and exempt, and another portion may be exempt from epilation or other

services that are not part of the threshold, it did not take an awful lot of brains to realize that this doctor was far beyond a \$400,000 man. I mean, that was given in his assertions to the press. So I think the prevailing mood was that he did quite well, but I certainly did not release any kind of figures to indicate the degree to which that took place.

**Ms Jackson:** Was there any discussion in that lunch meeting at all of the possibility of any proceedings or investigation of Dr Donahue?

**Dr MacMillan:** No, I do not recall any mention of any kind of investigation or proceedings or charges or anything.

**Ms Jackson:** Thank you. Mr Chairman, I am proposing to go to a different day and a different subject.

**The Chair:** Thank you. At this point we will adjourn for the day. We will reconvene again at 10 o'clock tomorrow. Thank you.

The committee adjourned at 1717.



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**Also taking part / Autres participants et participantes:**

LeDrew, Stephen, Cassels, Brock and Blackwell

MacMillan, Robert, Ministry of Health

Page, S. John, Cassels, Brock and Blackwell

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CAZON  
XC 20  
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Gouvernement  
Publication



M-26 1992

M-26 1992

ISSN 1180-436X

## Legislative Assembly of Ontario

First Intersession, 35th Parliament

## Official Report of Debates (Hansard)

Tuesday 11 February 1992

### Standing committee on the Legislative Assembly

Inquiry re  
Ministry of Health  
information

## Assemblée législative de l'Ontario

Première intersession, 35<sup>e</sup> législature

## Journal des débats (Hansard)

Le mardi 11 février 1992

### Comité permanent de l'Assemblée législative

Enquête concernant  
certains renseignements  
du ministère de la Santé



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Published by the Legislative Assembly of Ontario  
Editor of Debates: Don Cameron



Publié par l'Assemblée législative de l'Ontario  
Éditeur des débats : Don Cameron



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# LEGISLATIVE ASSEMBLY OF ONTARIO

## STANDING COMMITTEE ON THE LEGISLATIVE ASSEMBLY

Tuesday 11 February 1992

The committee met at 1007 in room 228.

### INQUIRY RE MINISTRY OF HEALTH INFORMATION

ROBERT MacMILLAN

**The Chair:** I would like to resume the meeting of the standing committee of the Legislative Assembly. Yesterday we were in the midst of questioning Dr MacMillan. Good morning, Dr MacMillan. What I would like to do is resume the questioning by Ms Jackson.

**Ms Jackson:** Thank you, Mr Chairman. Dr MacMillan, just before we proceed, one correction that I would like to elicit from you arises from some specifics I gave you about the timing of the e-mails yesterday. I incorrectly asked you, Dr MacMillan, to confirm that the third of the series of e-mails that emanated from your office on the 13th came at 3:55. We subsequently marked the e-mail that came at 3:55. That was the one that was generated in Toronto and that was copied to you from Denise Allen and others. In fact, sir, can you confirm for me that the third e-mail that came from Kingston to Toronto was at 2:48?

**Dr MacMillan:** Yes.

**Ms Jackson:** Thank you. Yesterday, Dr MacMillan, there were three matters that were outstanding. I understand that you are in a position to address those this morning and perhaps just to keep things moving we could deal with that.

First of all, you had indicated that you would endeavour to find out to what extent billings information had passed from your office to Dr LeBlanc's office for reasons other than to deal with a particular doctor with respect to his affairs.

**Dr MacMillan:** Yes. There were none. There were several cases in which the doctor had approached Dr LeBlanc's office wanting assistance, where we agreed to assist the doctor on the understanding of his threshold impact. Information was sent with respect to billing patterns to Eugene LeBlanc for the purposes described.

**Ms Jackson:** So has somebody reviewed every instance in which billing information was sent to Dr LeBlanc's office?

**Dr MacMillan:** I reviewed with persons in both offices verbally in order to attempt to, from their memory, recall instances. I was only able to establish two other cases where information was given that was used solely for the purpose of dealing with the individual doctor concerned, to their satisfaction.

**Ms Jackson:** So based on people's memories, they can only recall two other cases where specific billing information went from your office to Dr LeBlanc?

**Dr MacMillan:** Yes.

**Ms Jackson:** The next thing, Dr MacMillan, was that you were going to attempt to ascertain how long a deleted

e-mail could remain in the electronic waste-basket of OHIP's mainframe computer and whether and how anyone could have access to it.

**Dr MacMillan:** Yes. Any document that has been placed in the electronic waste-basket, and the waste-basket is subsequently emptied, can be retrieved, but the retrieval must be through a computer program with Ministry of Government Services, one that none of us has ever attempted to use. I am told, again verbally, quickly, that that opportunity is usually wiped out in a week or two as well. So essentially, when something is put into the electronic waste-basket it is not retrievable easily, and then only for a week or two.

**Ms Jackson:** Is the difficulty of retrieving it due to simply the fact that some people may not have the technical expertise, or because there is any security clearance required in order to be able to retrieve it?

**Dr MacMillan:** I am not certain of the answer to that.

**Ms Jackson:** Then, Dr MacMillan, you were going to endeavour to determine how many hard copies and electronic copies of the e-mail remained in the hands of, or accessible to, people in the Kingston office after November 13.

**Dr MacMillan:** Let me preface by saying that I was obviously more concerned about the memos outside of my office, inasmuch as we have all that information available to the staff who had hard copy anyway. But in the office of the provider services branch, Bill Teatero, Bob McBride, Dr Simon Kovacs and Peter Quinn were in possession of copies. I might say that on December 11, when the newspaper raised the issue of such a document, our coordinator for freedom of information, Andrew Parr, requested that no one destroy any documentation because of the anticipated subsequent examination of this matter by the freedom of information commissioner that had been requested by the deputy minister.

**Ms Jackson:** And therefore the copies that Mr Teatero, Mr McBride, Dr Kovacs and Mr Quinn had were retained?

**Dr MacMillan:** Yes.

**Ms Jackson:** And did you have or retain a copy of the e-mail?

**Dr MacMillan:** I subsequently got one from them. I actually got one from them the evening of the telephone call from the reporter suggesting there was a copy outside the ministry.

**Ms Jackson:** Okay, we will come to that in a minute. Then may I return, Dr MacMillan, to the November 30 visit to Sudbury by yourself, Dr LeBlanc and Mr Belyea that we were discussing yesterday? Mr Chairman, the note of that visit is exhibit 16.

**The Chair:** Just for members of the committee, we are going back to refer to exhibit 16 as handed out yesterday.



**Ms Jackson:** Dr MacMillan, you made reference to discussions with Shelley Martel before and after the meeting with the Sudbury cardiologists. In your discussions with Ms Martel, did she seem well-informed about the details of the thresholds and their impact on physicians?

**Dr MacMillan:** I think, as with most people who had any interest in this, they had the generic overall recognition that the main component of the agreement provided for the reduction of fees over \$400,000, and further reduction over \$450,000. I do not know whether she understood as well the technicalities of what would be deductible from that or excluded from calculations of the threshold, such as the underserviced area program—when they started, when they ended—such as the technical fees that were already in the schedule of benefits, and ones that we had recently decided upon that would be technical fees to help physicians.

So this is a very complex agreement. Even those of us who are involved with it are still working out the ramifications of it. So I think it is fair to say she had a cursory knowledge of the agreement but did not understand all of the issues that were being raised by physicians, both in the press, directly to her, and of course that morning in detail by the cardiologists.

**Ms Jackson:** I take it from what you said yesterday, how the underserviced area program worked and its impact on some of these doctors was something that was generically discussed in these conversations?

**Dr MacMillan:** Yes.

**Ms Jackson:** Now, I had asked you yesterday, Dr MacMillan, whether anybody from the ministry provided any information with respect to individual physician's billings in those conversations. I would like to turn that around this morning and ask you whether Shelley Martel said to you or to anyone else, in your hearing, anything specific about Dr Donahue's billings at all.

**Dr MacMillan:** No, and I am quite emphatic about that, because I am sure if that had been mentioned I would have been amazed and it would be registered in my memory to this day. I have no memory of anyone at those two meetings or during the morning talking about any physician's billings in any detail, any precise figures—nothing coming from anyone else to us, nothing coming from us to them.

**Ms Jackson:** Well, there was some information about Dr Donahue's billings in general terms already in the press. We saw that yesterday.

**Dr MacMillan:** What is your question?

**Ms Jackson:** Do you remember that?

**Dr MacMillan:** Do I remember seeing some press clippings?

**Ms Jackson:** There was some specific information about Dr Donahue's billings in the press that would have been available.

**Dr MacMillan:** Oh, you mean information that Dr Donahue had given to the press?

**Ms Jackson:** Yes. We saw for example an article in the Sudbury Star on November 29 that says, "Donahue estimates that he needs a billing allowance equal to 2 to

2.5 times the \$400,000 cap, or \$800,000 to \$1 million." Are you aware of that information appearing in the press?

**Dr MacMillan:** Yes. I mean, I did not identify particularly which of the numerous engagements of the press that you are referring to. I recall now that he did make that comment, and others were alleged to have made those comments, in the press. I do not recall anybody, including Minister Martel, specifically pulling out figures that she had read in the press and discussing them with us.

**Ms Jackson:** So there was no discussion of billing figures where they were publicly available or otherwise?

**Dr MacMillan:** Not that I recall, no.

**Ms Jackson:** Now that is with respect to Shelley Martel. Was there any indication from any of the other members whom you indicated were at those meetings, namely Mr Laughren and Ms Murdock, that they were aware of any specific billing information concerning Dr Donahue?

**Dr MacMillan:** No. The only recollection I have, and I think others may recall this, is a request from Mr Rodriguez. Mr Rodriguez, and I am not sure whether he was referring to the cardiologist or to Dr Donahue, but he wanted to know how much they were billing the public plan. And I said, "Well, I can't tell you," and he said, "Well, I'll have you know I'm a member of the federal house and I'm asking it of you," and I said, "Too bad; you're not getting it." I said, "That information is protected and I can't give it to you." People were of course a little humoured by this interchange between Mr Rodriguez and me and my denial to offer him any kind of indication of billings by any physician.

**Ms Jackson:** You said yesterday that neither you nor anyone in your hearing gave any information to any of Ms Murdock, Ms Martel or Mr Laughren concerning specific physician's billing information. Were there conversations during the course of those several hours between Ms Martel and either Dr LeBlanc or Mr Belyea that you were not party to, or might there have been?

1020

**Dr MacMillan:** No. I was at the short breakfast meeting in which we were all at one table and there was general conversation. Although with that many people you might not hear everything at the other end of the table, Dr LeBlanc was sitting right across from me, I think Minister Martel was two seats to my left and Mr Rodriguez I believe was next to me. So from the bureaucrats' side the only information would be from Dr LeBlanc or me, especially me, and there was no conversation with any of the people we were conversing with about any particular doctor's billings.

**Ms Jackson:** That was at breakfast.

**Dr MacMillan:** Yes.

**Ms Jackson:** What about the lunch meeting?

**Dr MacMillan:** I will try to review what I told you already yesterday, and that is that it was a short luncheon and—

**Ms Jackson:** Sorry, just so you understand, Dr MacMillan, I am not asking you to revisit what you told us



about it, but at the lunch meeting, did in fact Shelley Martel speak to either Mr Belyea or Dr LeBlanc when you were not immediately present? Or do you know?

**Dr MacMillan:** No. I do know. We were all together all the time, for about half an hour or a little bit more maybe.

**Ms Jackson:** All right. Let's continue, if we can, with your note. On page 3 you move on to discuss a meeting in Sudbury on December 5, 1991, and on that occasion, I understand from your note, you, Dr LeBlanc and the deputy minister, Mr Decter, attended in Sudbury.

**Dr MacMillan:** Yes.

**Ms Jackson:** And the purpose of that attendance was what, sir?

**Dr MacMillan:** I want to straighten out, because I think there may be a bit of confusion about what these two meetings were, if you give me one minute. The first meeting, the one we have been talking about, was to go to Sudbury because the Sudbury Memorial Hospital had called a meeting to present its case, with its physicians, to the local MPPs. I received a call from Dr LeBlanc saying, "We've been asked to go to Sudbury," and I said, "When?" They said, "On Saturday," and I said, "Oh, no." I tried to see whether the meetings could be combined, because I knew already that the meeting the following Thursday was already set up, but my efforts were not successful because the MPPs were, of course, in the House and unavailable other than on the weekend. So the first meeting we were asked by, I presume, Shelley Martel's office to assist and be there.

On the second occasion it was the pre-arranged meeting I had tried to make with Dr De Blacam, the president of the Sudbury and District Medical Society, in which, after the meeting in Sudbury the first time, I became aware of the hostility and aggressive opposition to this agreement. I contacted the deputy and said that I would like some friends to go with me and I would particularly like it if he would come with me because I felt this was a bigger issue than we in the south were tagging into. He agreed to come, and we by that time knew that this was not simply a mutual dialogue. It was more of a mass presentation. We heard that it was going to be public. It was in the council chambers. They had extended invitations to apparently the Premier, the Treasurer. They had yellow nametags down in almost a bull pit in the front of the council chambers with all these names of these various people there, all of which ended up being empty, because even we did not want to be sort of on display.

We received a very cold recognition. In fact, no one came up to us officially and welcomed us. We sat in the audience and for several hours listened to various speakers, including a large number of physicians, give their views with respect to this agreement and in particular the threshold. There were various local politicians and other persons who spoke as well. Finally, I would guess a couple of hours, after these various speeches, the deputy was asked to speak. In spite of an overhead projector being requested, apparently none was made available. The deputy proceeded to present the position of the government and the

details of the agreement, in a very empathetic way, I thought. He was heckled somewhat and there were comments from the audience and so on. Following his presentation, a number of physicians returned to the microphone to continue the, I guess, government bashing, so to speak, and we were all, I think, at 11:30 rather exhausted from this, did not feel that it had achieved anything in the way of mutually looking at issues, as most of the profession does with us, and retired back to the hotel for the evening. The only MPP at the meeting was Sharon Murdock. Mr Laughren apparently had missed several flights because of the weather, and Minister Martel was, of course, in Thunder Bay.

**Ms Jackson:** Was Dr Donahue at the meeting?

**Dr MacMillan:** Yes, he was. It is my understanding that he also happens to be secretary of the Sudbury and District Medical Society.

**Ms Jackson:** Was there any discussion by anyone at the meeting of Dr Donahue's particular situation?

**Dr MacMillan:** No.

**Ms Jackson:** Did you have any discussions with Dr Donahue on that occasion?

**Dr MacMillan:** It was only a brief one in which I leaned forward and he came over and I asked him if the committee planned on listening to us any time during the evening. He went up to the president, who was chairing the meeting, and shortly thereafter Mr Decter was allowed to speak.

**Ms Jackson:** And that is the only interchange you had with Dr Donahue on that occasion?

**Dr MacMillan:** On that occasion.

**Ms Jackson:** Yes?

**Dr MacMillan:** Yes.

**Ms Jackson:** And apart from that occasion and the one or two telephone conversations you told us about earlier, are those the only conversations you have had with him?

**Dr MacMillan:** Yes.

**Ms Jackson:** You said, both in your evidence and in your note, that Ms Murdock was in attendance and you say in your note that prior to attending the meeting you had a brief dinner meeting with Sharon Murdock. Who was there? Well, in fact you say in your note. You say the three ministry officials, that being yourself, Mr Decter and Dr LeBlanc, and Esko Vainio, who is who?

**Dr MacMillan:** He is the CEO of the Sudbury Memorial Hospital.

**Ms Jackson:** Was there any discussion during that dinner meeting of the specific financial circumstances of any physician?

**Dr MacMillan:** No, that was a very brief meeting. I mean, it was just to get some supper and get on to the general meeting. There was no discussion whatsoever. Obviously the people there would not be privy to the information, and none was passed either way by anyone.

**Ms Jackson:** After the meeting, you make reference to a short get-together which occurred between Sharon Murdock and the three ministry officials and Mr David



Sword, a member of Ms Martel's staff. David Sword's position is what?

**Dr MacMillan:** I am not certain. You had better ask someone else. I would imagine he is the communications officer, but I am not certain.

**Ms Jackson:** During that brief get-together, did Mr Sword say anything to you that indicated a knowledge of any of the specifics of Dr Donahue's practice?

**Dr MacMillan:** No, not a bit, and I do not recall talking about Dr Donahue with Mr Sword. Again, I am sure I would remember if he had startled me with inside information about Dr Donahue's billings. I am sure I would have remembered it.

**Ms Jackson:** Did Ms Murdock say anything to you about Dr Donahue or his situation?

**Dr MacMillan:** No.

1030

**Ms Jackson:** You make reference in this note, Dr MacMillan, to a media package that was handed out by ministry officials. Can you just confirm, sir, that that is the document we marked as exhibit 8 yesterday?

**Dr MacMillan:** Yes.

**Ms Jackson:** When did you return from Sudbury?

**Dr MacMillan:** Very early. I think it was a 7 am flight, because both the deputy and I were speakers at a Canadian Institute of Law and Medicine conference at the Royal York Hotel, the deputy being the keynote morning speaker. I recall because we were 15 minutes late getting there, getting there about 9:15. I was also a subsequent speaker speaking on confidentiality of patient records and planning for legislation in that respect. Then I was on a panel thereafter.

**Ms Jackson:** When did you first become aware of a controversy surrounding Ms Martel's visit to Thunder Bay the prior evening?

**Dr MacMillan:** During the panel questions a woman got up to the microphone whom I did not know and I believe introduced herself—or I later found out—identified herself as Evelyn Dodds from Thunder Bay, who recorded that she had had a conversation the previous night with Minister Martel, and if the ministry was so concerned about patient confidentiality, why was it not interested in physician confidentiality and why did I allow the release of confidential information on this Dr—

**Ms Jackson:** Rather than ask you to try and reconstruct it, as you know, we have obtained a transcript of that question and answer and I would ask that that be the next exhibit.

**The Chair:** That is now going to be handed out and be marked as exhibit 17.

**Ms Jackson:** Could you take a look at that, Dr MacMillan, and confirm that that was the series of questions that were put to you on that occasion and the answers you gave?

**Dr MacMillan:** Yes, I have read this before and this seems to be a true transcript of what I said and what Ms Dodds said.

**Ms Jackson:** Have you ever had occasion to discuss the incidents she describes there with Shelley Martel?

**Dr MacMillan:** No.

**Ms Jackson:** Have you subsequently learned whether or not Ms Martel received any confidential information, as Ms Dodds suggests there?

**Dr MacMillan:** No.

**Ms Jackson:** In the note that you made which we marked as exhibit 12 yesterday, you note on the second page that—I am not putting my finger on the specific point, but at some place in one of these notes, Dr MacMillan, you have indicated that, with the approval of the Deputy Minister of Health, you responded to press calls following this incident.

**Dr MacMillan:** Yes.

**Ms Jackson:** Your counsel is going to help me as to where we find that in the note.

**Dr MacMillan:** Yes. Let me say I think there is something missing in there too.

**Ms Jackson:** Can you just remind us where it is in the note?

**Dr MacMillan:** Yes, it is right in the middle of the page, just after the start of the paragraph under Tuesday, December 10: "Dr MacMillan, with the approval of the Deputy Minister of Health, was given leave to respond to press calls."

**Ms Jackson:** Thank you. And you were going to augment that?

**Dr MacMillan:** Yes. Because this was heated up and I have often been the spokesperson for issues related to OHIP and out-of-country payments and the other responsibilities we have, I felt that it was just a matter of time before someone was going to be phoning OHIP to determine whether or not we did have a tight ship. So I wanted to be able to give in general terms our track record and what we had generally in place to prevent this sort of thing. I subsequently did receive press calls.

**Ms Jackson:** Did you speak on December 10 to a reporter from the Toronto Sun?

**Dr MacMillan:** Yes, I spoke to at least two or three reporters that day. I think the first one was Derek Ferguson of the Toronto Star in which I said exactly what I just told you, that we were quite proud of our record, and we had various checks and balances, that we were not aware of any information ever going out from OHIP that would get in the wrong hands. That interview went fairly straightforward. The second call was about 5:20. There were two people in my office at the time, because we were having a meeting: Bob McBride and our legal counsel in Kingston, Laurel Montrose. I was in the process of a very routine interview with Sun reporter Anne Dawson and suddenly she of course proposed a question to me which rather shocked me.

**Ms Jackson:** What was that question?

**Dr MacMillan:** As I recall it, the best I can recall it, it went something like this. She said: "Dr MacMillan, I want you to listen to this question. Are you aware, do you recall,



a memo that was sent by e-mail from your office to the office of Dr Eugene LeBlanc in Toronto that contained detailed information about a physician's billings?" She went on to say, "You came in the next morning to Dr LeBlanc's office and got excited and made efforts to retrieve the document because you felt that the detail went beyond what was necessary. Are you aware of that impropriety?"—or something to that effect.

I think I sat in stunned silence for a minute, wondering whether to deny it or whether to acknowledge it. I did not want to lie about it, and I did not think there was anything done illegally, and I did not want to dig a hole for myself. So about 30 seconds later I said, "Yes, I recall a document that I did retrieve in the course of my job that went beyond the detail that I felt was necessary going out of the division." She tried to go on to insinuate that something terrible had been done and that this was totally incorrect. I tried to, obviously, tone her down and not agree with her that anything at that point was incorrect. The only incorrect thing was the fact that she either had the document or she knew of the awareness of the document.

Both at the time when I was speaking to her and since then, I have tried to analyse whether I felt she ever had the document or whether she was just told about the document by someone who was obviously aware and maybe even witnessed me getting excited. To this day, I do not know whether that document ever did leave the ministry, but certainly the contents in generality were known by her enough that I knew for certain that she was giving me a correct analysis of the existence of that document.

**Ms Jackson:** All right. Dr MacMillan, I am going to ask you to look at an article that appeared in the Toronto Sun the next day, December 11, which appears to be based on the conversation that you described. Is the conversation you described the only one you have ever had with Ms Dawson concerning this matter?

**Dr MacMillan:** Yes.

**Ms Jackson:** Do you have a copy?

**The Chair:** It is being exhibited as exhibit 18.

1040

**Ms Jackson:** Dr MacMillan, can you look at the second column of that article, in the second paragraph: "MacMillan, who is responsible for maintaining confidential information on doctors' billings, said an error was made by his staff in sending out data that was 'sensitive.'" As far as your recollection goes, is that accurate?

**Dr MacMillan:** No, it certainly is not. I would not be silly enough to acknowledge to a reporter an error even if an error had occurred, I do not think. The fact of the matter is also, though, that the lead line says, "Confidential records on a Sudbury doctor." I made no reference to any physician in the conversation. I only acknowledged the existence of a document that was retrieved. The details of the contents of that document were never discussed by me, but obviously she seemed to be aware of some of the detail.

**Ms Jackson:** In the second-last paragraph of that story she reports: "Sources told the Sun the information went to

at least two other health offices." Did she give you any indication of that fact?

**Dr MacMillan:** I think she knew whom they went to, yes. I cannot recall for certain. I have not read that for a while, but I think she knew not only the offices but I think she knew the names of the two people. I believe she was referring to Maurice Jones and Denise Allen, the communications officials who are used in the preparation of briefing notes.

**Ms Jackson:** Did she refer to any other health offices where the information was sent?

**Dr MacMillan:** No.

**Ms Jackson:** Did she indicate who the sources were?

**Dr MacMillan:** No. I do not know whether I asked her. I figured she would not tell me anyway.

**Ms Jackson:** After that conversation with Ms Dawson, did you have occasion to discuss the e-mail with anyone or to obtain a copy of it?

**Dr MacMillan:** You recall that the next morning when I went to Toronto—no, wait a minute.

**Ms Jackson:** This is December 10.

**Dr MacMillan:** Yes.

**Ms Jackson:** Just to put you in context, Dr MacMillan, I believe earlier this morning you indicated you may have around this time received a copy or copies of the e-mail?

**Dr MacMillan:** I think that very evening, Mr McBride, who is in my office—I said, "Go get me that e-mail; I want to read it again." Some things that the reporter told me were not very detailed and in fact one thing I believed was incorrect: the date of the memo. That led me to believe that if the document was right in front of her, why would she not relate—it says here on line 3 that the contents were vague. They were true enough that I knew she knew of the document, but it made me doubt that she had the document in front of her.

**Ms Jackson:** Do you know whether additional copies of the e-mail were generated for purposes of this discussion or review?

**Dr MacMillan:** That was the only one. I retrieved the document and reviewed it. I will just give you, if I can, the sequence of events. I went home that evening. The next morning I almost knew that I should come to Toronto to talk with the deputy or the minister and, sure enough, I got a call asking if I could come.

I made arrangements for a flight that morning, but just as I was leaving the office—I would like to comment about falling off my chair, if you give me leave—Toronto Star reporter Derek Ferguson called me and said, "You lied to me yesterday; you told me everything was squeaky clean at OHIP." I said, "I didn't lie; I didn't know about that document." He said, "Well, you told the Sun all about it." I said, "The Sun told me all about it." I finally said: "Listen, I didn't. I was so surprised I almost fell off my chair." I responded to her positively, and that is how that article of course came out.

I went to Toronto—



**Ms Jackson:** All right, Dr MacMillan, you have jumped ahead. So that we have this in context, let's—

**Dr MacMillan:** I am still talking about the e-mail.

**Ms Jackson:** I understand that, but since you made reference to the Star article and what was in it, let's put that in front of the committee members so we can put in context the comments you have just made. That is the Toronto Star article of December 12, Mr Chairman, if that could be—

**The Chair:** Marked as exhibit 19.

**Ms Jackson:** In the middle of that article in the second—

**Dr MacMillan:** This is not the article. I think the one that most people know and that was raised in the Legislature is the noonday edition of the Star. That is written slightly differently.

**Ms Jackson:** The quote that you are referring to, I think, occurs in this article in the middle of the second column. Can you take a look at that?

**Dr MacMillan:** Yes.

**Ms Jackson:** As far as you recall, is the quote in the article you are referring to the same?

**Dr MacMillan:** Yes.

**Ms Jackson:** I think all that has happened is there are probably two editions in which the same story is repeated. I take from what you have said that it is not your recollection that you said, "I almost fell off my seat when I learned someone had broken their oath of allegiance."

**Dr MacMillan:** Yes. I said that.

**Ms Jackson:** Did you think anyone had broken their oath of allegiance?

**Dr MacMillan:** I immediately jumped to that conclusion, that somebody who had access to it, among the people whom I had understood at that time had access to it, either gave it or expressed the details about it to someone else that they should not have.

**Ms Jackson:** So the breaking of the oath of allegiance, is that in your view sending the information to Toronto or releasing it to the media?

**Dr MacMillan:** Oh, no. It was releasing it to the media. It is interesting that the Sun article the next day attributed the leak to one of my staff, which was rather poor reporting and upset my staff member considerably.

**Ms Jackson:** Which article are you referring to now, Dr MacMillan?

**Dr MacMillan:** I am sorry; the article I am referring to came later, on January 27. But throughout some of this, the media reporting has had some inaccuracies.

**Ms Jackson:** All right. Let me then return to the disclosure of this information. So far as you know, did anyone other than yourself, Dr LeBlanc, Maurice Jones, Denise Allen, Helen Ambrose or Diane McArthur know of your meeting with Dr LeBlanc on November 14?

**Dr MacMillan:** I do not know the answer to that. I told you, I believe, that I do not recall any of the minister's staff who are on those floors in the Hepburn Block being

there, but I do not think I was satisfied at that point that one of them did not have the e-mail and the material.

**Ms Jackson:** No. But, Dr MacMillan, you have indicated and the story clearly indicates Ms Dawson knew about the meeting.

**Dr MacMillan:** Right.

**Ms Jackson:** Do you know of anyone else who knew about the meeting, other than the people I have listed?

**Dr MacMillan:** I would not know that. I mean, if someone told someone about the meeting, how would I know that?

**Ms Jackson:** I am not saying, Dr MacMillan, nobody else did know. But do you know of anybody else who knew of that meeting—

**Dr MacMillan:** Oh, I see.

**Ms Jackson:** —other than the people I have listed?

**Dr MacMillan:** No.

**Ms Jackson:** Thank you. Did Ms Dawson mention the doctor's name in the course of your conversation with her?

**Dr MacMillan:** I cannot remember.

**Ms Jackson:** I am sorry; I interrupted you. You were saying you then went up to the ministry.

**Dr MacMillan:** I went to the ministry. You are aware of the order by Andrew Parr, our freedom of information coordinator, not to destroy any documents. A meeting was held in the minister's boardroom, with the minister chairing the meeting, with a number of people from her staff, and the deputy minister, a number of people from his staff. I gave a briefing verbally to the deputy and the minister with respect to the issue.

**Ms Jackson:** All right. You have made reference to an order by Mr Parr under the Freedom of Information and Protection of Privacy Act. Can I put before you that directive and mark it as the next exhibit? Can I ask you to take a look at a directive that we will put in front of you now from Andrew Parr of December 11 and ask you to confirm that that is the directive you are referring to?

1050

**Dr MacMillan:** Yes, that is the document.

**The Chair:** I would ask if members could mark that interoffice memo as exhibit 20.

**Mr Kormos:** Mr Chair, could Ms Jackson wait until we get the exhibit before she goes on?

**Ms Jackson:** Certainly. Dr MacMillan, can you review those instructions and confirm that from the perspective of the health insurance division they were carried out?

**Dr MacMillan:** Yes, they were. They were reviewed by my staff, my executive assistant, and we took steps to follow through.

**Ms Jackson:** I am now going to put before you, Dr MacMillan, the article of January 26 in the Toronto Star because you made reference to that in your remarks a few minutes ago. I think you said there was something in there that was inaccurate and I am going to ask you to identify what that is.



**Dr MacMillan:** I am sorry. It was the Sun on the 27th. The article in the Star the day before was fairly accurate and fairly well done.

**Ms Jackson:** Mr Chairman, I think we will be getting to this article eventually, so perhaps we should mark it as exhibit 21 in any event. That is the article of January 26.

**The Chair:** The Toronto Star article of January 26, 1992, will be marked as exhibit number 21.

**Mr Kormos:** Mr Chair, while we are speaking about these articles, Dr MacMillan spoke of yet another edition of the December 12, 1991, Star, the same article that is in the exhibit but altered to reflect a later edition. The doctor somehow seems to think there are some significant changes between the two editions. I would appreciate it if those could be made available to us too.

**Dr MacMillan:** I am not sure.

**Mr Kormos:** How significant they are, who knows? But let us take a look. It is always interesting, the evolution of a story during the day compared to during the week.

**The Chair:** Thank you very much, Mr Kormos. Dr MacMillan, if you could make that article available we will make photocopies of that and distribute them. Thank you very much.

**Ms Jackson:** Dr MacMillan, I am going to ask to have placed in front of you an article of January 27, 1992, in the Toronto Sun.

**The Chair:** For members of the committee, that article is now being distributed and I would ask if you could mark that as exhibit number 22.

**Ms Jackson:** Dr MacMillan, in the third-last paragraph of that article it says you admitted last month that, "a senior OHIP official in Kingston broke their oath of allegiance and sent a briefing note on Donahue's billing practices to the Health ministry." Is that accurate?

**Dr MacMillan:** No, it is not, and that is what I was raising earlier. I wish to correct that impression. I did not at any time, nor do I now, admit that anyone in Kingston broke their oath of allegiance. The sending of the briefing note to Toronto I see as an entirely separate incident to the fact that the media were in receipt or had knowledge of the document. I have not determined the source of the document the media received.

**Ms Jackson:** Then can I take you back to exhibit 19? There is reference there to a statement from Dr Jack Hollingsworth, and I am looking at the middle column in which it is alleged that Dr Hollingsworth said, "She knew statistics about me that I must say I didn't know myself."

I am going to show you a copy of a transcript from the ministry's files of an interview on CBC on December 11 and ask if you can identify that as a transcript of a CBC broadcast obtained from the ministry's files.

**The Chair:** Members of the committee, that transcript is now being distributed and marked as exhibit number 23.

**Ms Jackson:** On the telecopy number in the lower right-hand corner it is page 9. I am going to ask you to assume that although this broadcast says "Hallingsworth"

it is in fact the Dr Hollingsworth who is referred to in the article.

Dr Hollingsworth is said to say: "Could I just make one more comment with respect to files. You know, I didn't realize this but—I didn't realize that the politicians were entitled to have our files, but Mrs Martel did have my file. She told me she'd seen my file when I met with her and this question about a doctor's—she wasn't referring to me in that conversation with Mrs Dodds, but she did have access to my file and Dr Kosar's file and she said that to both of us in her—"

The interviewer asks, "Now, was that because you authorized that access?"

"No," Dr Hollingsworth says, and then he goes on, "I'm saying she told me she'd seen my file. She knew when I entered the underserved area program."

Stopping there for a moment, Dr MacMillan, assuming this is the same Dr Hollingsworth who was the specialist on the underserved area program on the list I took you to yesterday, would I be correct in understanding that the fact that Dr Hollingsworth was on the underserved area program was public knowledge?

**Dr MacMillan:** Yes.

**Ms Jackson:** And the period in which he would be on that program was public knowledge?

**Dr MacMillan:** Yes.

1100

**Ms Jackson:** But would any other specific information about Dr Hollingsworth be public—specific knowledge about Dr Hollingsworth's billings or billing practices?

**Dr MacMillan:** No.

**Ms Jackson:** Would there be any file on Dr Hollingsworth which should be available to Ms Martel?

**Dr MacMillan:** I do not even know whether there is a file that exists on Dr Hollingsworth. It is not an issue with the threshold. No communication has ever been made to us that I am aware of asking information by Dr Hollingsworth or from anyone else for that matter. I have never seen a file on Dr Hollingsworth. I am not certain whether there is one that exists.

**Ms Jackson:** In any event, if there is any file with respect to Dr Hollingsworth and, in any event, any information that your division has with respect to Dr Hollingsworth concerning specific billing information should not be available to Ms Martel?

**Dr MacMillan:** Most definitely.

**Ms Jackson:** And the same answers would apply with respect to any file or billings information with respect to Dr Kosar?

**Dr MacMillan:** The same answer: It should not, obviously unless the physician allows the person to be their agent in some way, but that does not seem to enter this argument.

**Ms Jackson:** Have you had any occasion to speak to Shelley Martel since the meeting you had with her in Sudbury on November 30?

**Dr MacMillan:** Yes, on two occasions.



**Ms Jackson:** When?

**Dr MacMillan:** The day I was giving the briefing to the minister and the deputy, someone came in and said a call had been placed to me from Minister Martel—

**Ms Jackson:** This is the meeting you were telling us about earlier.

**Dr MacMillan:** On December 11.

**Ms Jackson:** Yes?

**Dr MacMillan:** I believe I asked both the minister and the deputy, "Should I take this?" I was obviously not very eager to engage in any conversation with the minister. I believe I went into Tiina Jarvalt's office. She may have been there.

**Ms Jackson:** Who is Tiina Jarvalt, again?

**Dr MacMillan:** The executive assistant to the deputy minister. I made a brief phone call and there was some innocuous request from Minister Martel. I have tried to remember what it was. It was some simple thing. My conversation did not last more than a couple of minutes. It was for pure information and I cannot remember whether it was, "What was in the paper was true?" or "Did that happen?"—something to that effect. It was not something that stuck in my mind. It certainly was not anything requesting any kind of detail or discussing any previous conversations or meetings with her.

**Ms Jackson:** Have you spoken to her on any other occasion?

**Dr MacMillan:** She phoned my office and I cannot remember the date because I cannot record incoming calls, but presumably from her office. She phoned to find out about the underserviced area program and, was indeed the information that we gave out as to names of physicians who had received grants under the underserviced program public knowledge? I confirmed for her that indeed we had had an opinion from the freedom of information coordinator in the ministry and that that would be like any other bursary or research grant that the Ministry of Health issues. That is public knowledge and can be made available to anyone in the public who requests it. That was the recollection of that conversation and no other topics were discussed.

**Ms Jackson:** Thank you. Mr Chairman, I have one short remaining area of questions for Dr MacMillan that would elicit information that is in a protected category under the freedom of information act, and I would suggest that be deferred because it would need to be dealt with, as you have indicated earlier, in camera.

**The Chair:** Thank you very much, Ms Jackson. As the subcommittee has discussed and decided and as was indicated yesterday on the advice of counsel in response to that particular type of information pursuant to number 10 of our terms of reference which reads: "If there shall be any objection to the disclosure of information based upon the Freedom of Information and Protection of Privacy Act, the committee may continue the proceedings in camera," we will do so on that basis.

I would like to thank you, Dr MacMillan. At this point in time, per agreement with the members of the committee as agreed to by members of the subcommittee, we will

open up questions by members of the committee on a rotating basis on the information provided by you to this point in time. On that basis I would ask and inform members of the committee that, is as per an agreement by the subcommittee, we will allow members of the official opposition to commence questions, to be followed by members of the third party and to be followed by government members.

We have agreed that this type of process will rotate each and every witness before the committee. We have suggested that a time frame of approximately one hour per caucus be allocated, to be used if they so wish. On that basis I would open it up to members of the official opposition, if there is any question that they would like to pose to Dr MacMillan at this point in time. Mr McGuinty.

**Mr McGuinty:** Thank you, Mr Chair. Dr MacMillan, I am going to go back to the business of the three e-mails. I want to deal with the requests, the issue as to the propriety of such requests, the issue as to the propriety of the information sent, the propriety of transmittal by e-mail, the group of people who obtained the information directly in addition to the group of people who may have obtained it, and then I am going to touch on the meetings in Sudbury.

Let me begin by asking you about the requests for the information. As I understand it, it came originally from a D. McArthur in Dr LeBlanc's office. Is that correct?

**Dr MacMillan:** Yes.

**Mr McGuinty:** Do you know who or what prompted this request?

**Dr MacMillan:** I have heard of it second hand recently, but I do not know whether you want me to give that type of hearsay evidence or whether you want to get it directly.

**Mr McGuinty:** It is certainly acceptable to me.

**The Chair:** It certainly is up to you, Dr MacMillan, if you wish to provide that information.

**Dr MacMillan:** I just give it with the knowledge that the details may be a bit sparse. It was always my impression that it was for a priority briefing. When I asked that question just a couple of days ago of Diane McArthur, she said that the minister's office had several inquiries about the issue because of it being raised in the press and wanted a briefing note prepared. I was led to believe that the Treasurer also wanted details of the matter, and that is why, in part, apparently there was a degree of urgency felt by staff in getting the information and preparing it.

**Mr McGuinty:** Thank you, Doctor. I gather you cannot provide us with any more detail in terms of who specifically within the minister's office?

**Dr MacMillan:** No. I believe there are memos, e-mails again, that will satisfy that question.

1110

**Mr McGuinty:** This request by Diane McArthur was made by telephone, according to your notes, I understand. Is that usual?

**Dr MacMillan:** Yes. It is common to call back and forth.

**Mr McGuinty:** It is considered acceptable?



**Dr MacMillan:** Yes.

**Mr McGuinty:** And the information that was requested, was that properly entitled to be answered by the provider of services branch? Did it fall within that list of limited circumstances we reviewed yesterday?

**Dr MacMillan:** Yes.

**Mr McGuinty:** The additional calls that were received from a D. Allen and M. Jones, why did those come? Do you know? It seemed to me we had a call initially from a Diane McArthur and that the office was acting on that request. Then we had additional calls.

**Dr MacMillan:** I am not privy to evidence that has been heard here about those calls. Maybe you have read it in something. I know several calls were made back and forth. It is important for the committee to understand that the communications department serves, as I see it, two roles with two different hats on there, to serve in public communication and dealing with the media, but they are also writers and they assist internally with editing briefing notes and making them readable for priority briefings for the minister. It was my understanding, as it was of the persons involved in the transactions that day, that the two media people were involved in the preparation of the priority briefing.

**Mr McGuinty:** I see. Was that considered usual?

**Dr MacMillan:** Yes, very usual.

**Mr McGuinty:** The information provided now, if I might deal with that, with respect to the first e-mail. Of course, respecting the restrictions imposed upon you by the operative legislation, Dr MacMillan, the information in the first e-mail, was that factual in nature only? Was there any editorializing?

**Dr MacMillan:** Well, let me say just in general terms that there was factual information in there, I suppose with some subjective opinion.

**Mr McGuinty:** Opinion was offered?

**Dr MacMillan:** Yes.

**Mr McGuinty:** All right. The factual information was relating to billings, as I understand. Is that correct?

**Dr MacMillan:** Yes, essentially.

**Mr McGuinty:** All right. Was there any reference to any—

**Mr Page:** This is a concern we have. We have worked through with committee counsel how to deal with these questions. Again, we are in public. You start asking questions about the content of the e-mail. It was our understanding that it was going to be generically identified and that committee counsel would ask certain questions about it.

We are just treading a very thin line on the questioning. I am not objecting, but I want to put kind of everyone on notice that when you get into this area it is very hard to reply to a question about a document that contains a lot of confidential information without slipping into discussing the confidential information. If we can put that on the record and express our serious concerns about questioning on the e-mail, because again, it was not our understanding

that that level of detailed questioning would occur on it. I just want to raise that question with the Chair. We can proceed with that caveat.

**The Chair:** Thank you very much. As we have already noted, there will be a point in these proceedings where we will be going into an in-camera session pursuant to the terms of reference.

**Mr McGuinty:** Thank you, Mr Chair, and I appreciate the point you make, counsel. I am going to ask this question notwithstanding. If you think I am overstepping that line, then please advise me.

Just generically speaking, it contained information with respect to the billings. Did it contain any information with respect to charges or the potential of such charges under the Medical Review Committee?

**Dr MacMillan:** No, it did not.

**Mr McGuinty:** All right. Thank you. With respect to the second e-mail, can you tell me how that differed from the first one generically?

**Dr MacMillan:** I have to understand which second e-mail you are referring to.

**Mr McGuinty:** The one that I understand was sent at 2:20.

**Dr MacMillan:** It was just brief additional information, a line or two of some further figures.

**Mr McGuinty:** All right. And the third e-mail, which I understand we originally thought was at 3:55, but actually it was sent at 2:48—

**Mr Christopherson:** On a point of order, Mr Chair: I am one of the subcommittee members and—I apologize for interrupting Mr McGuinty—I know that in subcommittee we agreed we would go through all the questions, then we would go in camera and then we did not deal with the issue, but then I guess we could go into further public questions if we wanted after that. I want to suggest to the Chair and the other members of the subcommittee that we consider going into camera and hearing that information. Then we will have it out of the way and then we can come back and ask all the questions we want without interruption.

**The Chair:** Thank you very much, Mr Christopherson. Unfortunately that very point has already been decided at subcommittee. Certainly, if you would like to bring that back up at a subcommittee meeting, I would be more than pleased to discuss it. The process as to the questioning by committee members of Dr MacMillan has already been discussed. I would be very wary of changing that outside of the subcommittee, but I thank you for raising that.

**Mr McGuinty:** The third e-mail, Dr MacMillan, generically speaking?

**Dr MacMillan:** The third e-mail was simply a copy sent to Denise Allen and Maurice Jones, which had earlier been sent to Diane McArthur with a covering sheet just saying: "Here is the requested material."

**Mr McGuinty:** All right. I understand, Dr MacMillan, that normally when information of this type is prepared it is



subject to review by yourself or Ms Fleming or possibly Ms Heath?

**Dr MacMillan:** When we prepare what we are responsible for as a priority briefing, yes, that is the proper process. In this case, and you will ask other witnesses, it seems to be the understanding that Dr LeBlanc's office was responsible for preparing the information. We were a part, probably a major part, in the passage of information in order that that priority briefing be prepared.

**Mr McGuinty:** Right. Had this been drawn to your attention at the outset, you would have provided different information—less detailed information, I think you indicated in your notes.

**Dr MacMillan:** Yes, I would have.

**Mr McGuinty:** Okay. The third e-mail was sent in the afternoon. Had Ms Fleming returned by then?

**Dr MacMillan:** I believe she had.

**Mr McGuinty:** I just wonder why this was not brought to her attention and why she was not involved.

**Dr MacMillan:** I think for the reason I just stated, that at the time we were simply supplying information for the preparation of a briefing note. It happens very frequently on many issues where we might have only a small role to play. Abortion clinics might be an example. There might be an issue at a hospital or something where a physician component may have been involved.

It was not unusual to be a partner in preparing a briefing note, but we were not, through the usual process, through my office, asked to prepare a briefing note. In fact, the information that was being transmitted between the staff in my branch on this matter was not even copied to me. I guess it was felt by them to be in the usual course of one of the numerous pieces of information being sought with respect to the whole issue of the OMA agreement and the billing as it was affected by the thresholds.

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**Mr McGuinty:** I am a bit confused then, Dr MacMillan, as to whose responsibility it is to vet or okay the information that is being released. Was it Dr LeBlanc or was it your office?

**Dr MacMillan:** No, it would have been primarily, in that case, Dr LeBlanc having the responsibility for the briefing of his office. It would normally be signoffs and checks that he would have carried out, and he would have followed the same rules had I had the primary responsibility. I would have sent it to the executive assistant to the assistant deputy minister. In his case, I believe at that time he was still reporting to Mary Catherine Lindberg, an assistant deputy minister, and that signoff would have gone through that process.

**Mr McGuinty:** I thought you said in your testimony yesterday that Mr McBride—I think these were your words—took responsibility for what happened.

**Dr MacMillan:** Yes. I had said that when I had called back from Dr LeBlanc's office to Mr McBride and said, "Why did this e-mail come up to Toronto from Bill Teatero?" I said: "It contained far too much detailed information on this physician and I want it pulled back. Who

did this?" Mr McBride immediately took responsibility, saying: "I was involved with that. I knew that the e-mail had been prepared and I sent it on to Toronto, as requested." I mean it was sent by Mr Teatero's machine, but the approval of the branch acting director had been given.

**Mr McGuinty:** So it was Mr McBride's responsibility then? I do not like to use the word "blame," but if we were to assign blame for providing too much information, that would lie with Mr McBride?

**Dr MacMillan:** Mr McBride acknowledged immediately that he authorized the transmission of the information.

**Mr McGuinty:** Fine. I will move on to something else here. The information that was provided, was there anything wrong with the amount of information provided?

**Dr MacMillan:** That is a good question, and one that we have already been through probably in more depth than any other ministry because of Minister Gigantes. Following the resignation of that minister, the information and privacy commissioner did a thorough investigation of the various steps of transmission of such information. As you recall, in that case it was detailed information on a patient, not detailed information on a physician. We have a copy of that investigation report that the Chairman may wish to introduce as an exhibit, because that very question was asked in that matter, and while in the end it seems that a judgement call may have not been prudent, it was not in breach of the freedom of information. Indeed, in that particular instance, information went to the minister, as you know, and it was determined that the minister did have the right to know, the need to know.

The judgement call was whether or not someone should expose a minister to that type of information that even inadvertently might slip out. Almost all of us, I thought, were so knowledgeable and so experienced in what happened on the previous occasion and we were so sensitized to it that I had never seen information since that time go that I was not happy with. So this came as a surprise and was obviously demonstrated by my immediate reaction.

**Mr McGuinty:** The information that was provided in these e-mails—back to my original question, Doctor—the mere transmittal of this information to the intended parties who received it, was that proper and lawful?

**Dr MacMillan:** I still believe, although there may be further investigations and this committee may make other decisions, that staff did not act with prudence, but I do not believe they did anything, to my knowledge, in breach of the three pieces of legislation that I have referred to.

**Mr McGuinty:** At one point in your notes, Dr MacMillan, you indicate that Mr Teatero consulted with a medical consultant in the branch and then prepared the document. Who was that medical consultant? I am referring to exhibit 12, the last paragraph.

**Dr MacMillan:** I believe the physician's name was Dr Robert Ecclestone.

**Mr McGuinty:** And what is his role?



**Dr MacMillan:** He is a medical consultant. That is his title.

**Mr McGuinty:** Why would Mr Teatero consult him?

**Dr MacMillan:** Why?

**Mr McGuinty:** Yes.

**Dr MacMillan:** The physicians in the branch are there for advice for piecing together information and putting it in some perspective. I know of no other reason than that. The person in charge of that department where most of the information would have been retrieved by Mr Teatero is normally Dr Simon Kovacs, who was on holiday that week.

**Mr McGuinty:** That brings up another matter. I understand a hard copy of the third e-mail was sent to—is it Drs?—Kovacs and Quinn?

**Dr MacMillan:** He is asking why?

**Mr McGuinty:** Yes.

**Mr Page:** Mr Chairman, frankly I think that will get into an area which would require a response in camera.

**The Chair:** Mr Guinty, if you could make a note of that for another venue.

**Mr McGuinty:** We have the list of names, Dr MacMillan, of people who received the various e-mails. You indicated yesterday that there is a group—perhaps it was the Kingston office—you had greater confidence in the Kingston office's ability to deal with confidential information. Is that accurate?

**Dr MacMillan:** Yes.

**Mr McGuinty:** All right. Now, if we remove those people from the picture and we deal with the others, ministry staff, can you here today limit for us in any way, or circumscribe, the group of people who may have had access to that information that was forwarded under cover of the e-mails?

**Dr MacMillan:** I personally, my office not being in Toronto, can only give you the names that are on the e-mails that I have assumed—and have some evidence to know—that they received the document. I have various scattered pieces of information that Larry Corea received the document. I have never talked to Larry Corea and looked at him and said, "Did you receive the document?" I have not done any personal investigation to determine who may have seen or been in receipt of the document. I would expect that a secretary or two might obviously have seen the document if a person had converted it from the electronic media to paper, so if they printed the document, as we know it was printed, in Denise Allen's and Maurice Jones's office, because they walked around the copy attached to the media report and a covering memo, as you are aware.

So I think the only names I have, I have given. I do not have any knowledge of anybody who I would be surprised had the memo. I only knew of people who would normally and properly, in my view, be in receipt of the material in order to prepare a briefing note, but I have not obviously information beyond that.

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**Mr McGuinty:** Can you provide us with any kind of assurance that those persons who would deal with this kind of information in the normal course of business did not disclose this information, either advertently or inadvertently, to others?

**Dr MacMillan:** Could you repeat the question, just so I am certain?

**Mr McGuinty:** Can you provide us with any kind of assurance as to specifically who it was received this information? Can you offer any guarantees?

**Dr MacMillan:** I cannot give you any names other than I have already given in my evidence. I have no idea whether anybody else received the information, factually and in hard copy or electronically. I only have the evidence that either the contents of it or the awareness of it was in the hands of Anne Dawson. That is all I know.

**Mr McGuinty:** If I were to give you names, could you provide me with the names which you have not listed as those people who have received this information? Could you tell me for certainty that that person did not receive the information?

**Dr MacMillan:** No, I could not tell you for certain.

**Mr McGuinty:** For instance, the Minister of Northern Development—you could not assure me that she did not receive that information?

**Dr MacMillan:** No, I could not do that.

**Mr McGuinty:** What about the Minister of Health?

**Dr MacMillan:** No, I could not do that. I know that—or I presume, I do not know that either—I presume when the note was properly edited and the system worked in effect, to my knowledge, the proper note was received by the minister. But I have no knowledge whatsoever of whether the minister had access to or saw the more detailed information.

**Mr McGuinty:** Just on that point, Doctor, while I think of it, in the House I think the minister indicated in response to a question on December 9 that, and I am going to quote: "I have very specifically asked and received assurances from my deputy minister, who has heard directly from the director of OHIP, that no confidential information with respect to doctors' files and their billings and their incomes has been shared with anyone outside the OHIP department which has proper access to that information. I have not seen it, the Minister of Northern Development has not seen it and no other MPP has seen it."

**Dr MacMillan:** Yes?

**Mr McGuinty:** The information that was sent to the minister's office, either the first, second or third e-mail or the cleaned-up version which was sent the following day, November 14, did any of those contain confidential information?

**Dr MacMillan:** I think you will have to substantiate with witnesses in the minister's office who saw what. My information is secondhand at best. I presume, if the system worked properly, that anybody in the minister's office who gave any detailed information such as was in the initial



memo would have been a fool, having been through the Gigantes episode. I would be absolutely flabbergasted if I heard somebody had sent the initial memo to the minister. The preparation of the second document to my knowledge was finalized, signed off and approved and sent for purposes of the ministry and the minister.

**Mr McGuinty:** I am just going to go back to this quotation, Dr MacMillan, where the minister specifically says, and again I quote, that "no confidential information with respect to doctors' files and their billings and their incomes has been shared with anyone outside the OHIP department." It seems to me that the e-mails which reached the minister's office and came into the hands of some of her staff did contain confidential information.

**Dr MacMillan:** Yes, it would appear that that statement is not entirely correct. I have to emphasize the close working relationship that I told you of Dr LeBlanc's office with our office. There is no other analogy to that with OHIP. It is almost a part of OHIP. I can only surmise and conclude that the minister might have said that, assuming that to be the truth. To my knowledge the minister did not have knowledge of this document with the details of a doctor's billings. At that time—what date did you say? December 9?

**Mr McGuinty:** The 9th, yes.

**Dr MacMillan:** I seemed to be the first one to know that someone had provided a member of the press with that information on the 10th.

**Mr McGuinty:** Taking this a bit further, Doctor, she says here at the outset, "I have very specifically asked and received assurances from my deputy minister, who has heard directly from the director of OHIP," and that is you.

**Dr MacMillan:** This is again on the 9th?

**Mr McGuinty:** On the 9th.

**Dr MacMillan:** Yes.

**Mr McGuinty:** You are the director of OHIP.

**Dr MacMillan:** Yes. I am the executive director of the health insurance division.

**Mr McGuinty:** Would she be making reference to you here when she says "the director of OHIP"?

**Dr MacMillan:** The term gets bandied about. The proper term is the one I have given you, yes.

**Mr McGuinty:** Is that correct, then, when she said that you advised that "no confidential information with respect to doctors' files and their billings and their incomes has been shared with anyone outside the OHIP department"?

**Dr MacMillan:** I did not know about that until you have told me now. I believe I might have been asked. Again, the knowledge of the document was in the back of my memory. I mean, it was three weeks earlier. I might have given that assurance. Not recalling the particular document, it became a dead issue with respect to that individual physician. So I may have given that assurance or may have led them to believe that I felt our system was secure.

**Mr McGuinty:** I am just going to read this quote one more time. The minister, in response to a question from Mr Harris, replies—this is only part of the response; there is a

paragraph above dealing with another matter—"I have very specifically asked and received assurances from my deputy minister, who has heard directly from the director of OHIP, that no confidential information with respect to doctors' files and their billings and their incomes has been shared with anyone outside the OHIP department which has proper access to that information. I have not seen it, the Minister of Northern Development has not seen it and no other MPP has seen it."

The minister stated that, of course, unequivocally, and you are telling us here today, Dr MacMillan, that if you provided such an assurance you may have misled the minister or you may have forgotten about the e-mails. Is that correct?

**Dr MacMillan:** Certainly it is important that on the 9th of December, or earlier, had I been asked, I would have inferred to them that I was happy with the security of information. Whether or not I specifically said nothing went out of OHIP, I cannot remember. I might have said that and therefore misled them.

**Mr McGuinty:** It is possible you did not say it?

**Dr MacMillan:** But I also might have said that to my knowledge nothing has gone out of the ministry and the proper people who have this information to the outside. I cannot recall that. I would have probably answered at that time that I was quite happy about the security and not aware of any information that was in improper hands.

**Mr McGuinty:** Do you recall any conversation dealing with this matter specifically that you had with the deputy minister?

**Dr MacMillan:** No, I do not. I converse with the deputy frequently and I report directly to him now, but I cannot recall the specific day or time when he may have asked me that specific question.

**Mr McGuinty:** Is it possible that you never had that conversation?

**Dr MacMillan:** I think at that time the issue had become very public. You recall that I was confronted with it on December 6 and I immediately phoned the deputy and told him what I had been confronted with. Over the next week, I am sure that I had been talking with him about the potential of any file which was allegedly seen, any information that was allegedly available to Minister Martel that might have come from OHIP. I certainly reassured him that I had no knowledge of anything and I did not believe that there was any information out there.

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**Mr McGuinty:** When I come to the matter of the meetings that you had in Sudbury, Dr MacMillan, in particular there was a breakfast and a luncheon meeting on Saturday, November 30, 1991. During those meetings, who raised the subject of Dr Donahue? Do you recall?

**Dr MacMillan:** Can I ask for a piece of information I need? The Sudbury Star, I believe, had a front-page article with Dr Donahue's picture. This is what was in the paper the night I went to Sudbury. This was the hot topic of the day, a physician who was going to be packing it in and the big concern about patients who needed dermatology services,



and what would happen. There was another practising dermatologist in Sudbury, but even with the two of them, the patient load was significant.

I cannot recall exactly who said what about this article and Dr Donahue in particular, because it does focus in on him. I really cannot say for certain that his name was even mentioned at the morning breakfast meeting, but I did recite for you the questions of Mr Rodriguez, and that may have referred to him. But I do remember Dr Donahue's name being mentioned, along with the major subject, still, of cardiology services, at the noonday luncheon meeting between the three civil servants and Minister Martel.

**The Chair:** Just for information to committee members, the press clipping referred to by Dr MacMillan is in your exhibit 9.

**Mr McGuinty:** Dr MacMillan, I want you to tell me if you can, if you can describe it for me, the nature of the Ministry of Northern Development's interest in Dr Donahue. Maybe you can categorize it as follows: Was it a passing interest? Was it a keen interest? Was there no interest?

**Dr MacMillan:** This is at the—

**Mr McGuinty:** During the breakfast and luncheon.

**Dr MacMillan:** All three members, MPPs, who represented Sudbury and Nickel Belt, as I understand, around Sudbury—I knew, because I was told, that we were getting all kinds of letters and cards and opposition. Obviously it is easy for physicians to generate that type of response, seeing so many people per day. So they were genuinely concerned, I guess, as politicians, but they seemed to portray also a genuine interest in the health care of their own community that was being threatened. They all seemed committed to maintaining the integrity of the OMA-government agreement. After all, it was a bilateral agreement; it was not government's imposition of something.

The physicians in the province have a lot to gain by curtailing excessive or very, very high earnings by some of their colleagues as well. That seems to be well understood by the rest of the province. But certainly in many individual cases, and a rather prevalent view by the medical community in Sudbury, the threat of physicians leaving the north, where, as you know, it is difficult to attract and keep people—that is why we have had the incentive grant program—the danger and the threat was pretty great. I must say that their greatest concern was by far the cardiovascular services, where suddenly a service might be necessary on an urgent basis. It did not seem to have the same threat to the community as the treatment of warts and acne and skin lesions, and that is true. So I do not recognize or remember that there was much prevalence on Dr Donahue. The reason for the meeting, the whole reason for us going up there, was because Sudbury Memorial Hospital had precipitated a meeting chaired by Shelley Martel, the minister, and we were requested to go as civil servants to provide necessary and proper information for the understanding of the very hot issue at hand.

**Mr McGuinty:** Can you recall whether the Minister of Northern Development ever talked about Dr Donahue?

**Dr MacMillan:** We talked about Dr Donahue at lunch; I have made that clear. I recall definitely talking about the impact of his closing down. It was in the newspapers. We talked about what would happen with regard to patients who would no longer have access to services there. I think we talked about epilation. I believe Dr Donahue had gone on record with the media saying he had set up a doctor's studio next door to his office or something and that part of his practice at least was going to continue, in which he would presumably bill the public and hire the electrologist himself. So that general conversation did take place.

**Mr McGuinty:** Do you recall, Doctor, what Ms Martel may have said in relation to Dr Donahue?

**Dr MacMillan:** No. I simply remember, again, a concern, although less of a concern, about that particular service, but a concern that it was erupting into cessation of service, something that I guess as a member she would have to deal with with her constituents and was dealing with. I just do not recall anything more than that. But I do specifically recall that there was no discussion about detailed billings, profiles, charges, inspections or any of that.

**Mr McGuinty:** Is it fair to say that Dr Donahue's matter was causing problems for the minister?

**Dr MacMillan:** I do not think it would be causing a problem as much as the threat of cessation of cardiovascular services would have, and that was a very serious threat. A dermatologist would see far more patients than a cardiovascular surgeon, and it is my understanding that there was quite a campaign to pressure the politicians into amending or changing the exemptions to allow for physicians to continue in the north without the encumbrance of a threshold arrangement.

**Mr McGuinty:** Is it fair to say that a number of Dr Donahue's patients were writing to the Minister of Northern Development or to the ministry?

**Dr MacMillan:** I just said that it was my understanding; I do not remember whether anybody told me that or whether I just heard it. It is just that it was my understanding that this doctor, who was obviously going public frequently, would probably be, naturally, turning to his patients for support.

**Mr McGuinty:** This was a fairly big issue in the grand scheme of things in terms of medical treatment at Sudbury, though. Very topical.

**Dr MacMillan:** Very topical.

**Mr McGuinty:** Did anyone during those meetings, luncheon or breakfast, try to elicit information from anyone else at the meeting, which information would have been confidential?

**Dr MacMillan:** Only the episode I told you about, which was almost humorous. There was no serious request for any information, any files; nothing I recall.

**Mr McGuinty:** Were you present at all times during breakfast and lunch?



**Dr MacMillan:** Yes.

**Mr McGuinty:** You never left the table.

**Dr MacMillan:** No, I do not recall that I did.

**Mr McGuinty:** Was all conversation that took place overheard by you?

**Dr MacMillan:** I told you that in the morning meeting the length of the table—I might not have been able to hear. I think Mr Laughren was at the end with his staff member and Sharon Murdock, so I might not have heard everything they said. Mr Belyea, who did not know anything about physician billings anyway—he was a hospital coordinator—I think he was down more to their end of the table. I may not have heard everything, but I am certain that no information was transmitted, because the major person who knew the information was me. Dr LeBlanc would know some information because of the threshold arrangements.

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**Mr McGuinty:** Doctor, I understand you had files containing information of a confidential nature in your briefcase. Is that correct?

**Dr MacMillan:** Yes.

**Mr McGuinty:** Did you have a file in that briefcase on Dr Donahue?

**Dr MacMillan:** Yes.

**Mr McGuinty:** Can you describe Dr Donahue's file for me? First of all, the colour.

**Dr MacMillan:** It was, I believe, just several sheets of paper with figures.

**Mr McGuinty:** Was it inside a file folder?

**Dr MacMillan:** I think it was inside one of the plastic, clear-coloured envelopes.

**Mr McGuinty:** What size paper?

**Dr MacMillan:** Normal-size paper.

**Mr McGuinty:** Eight and a half by 11? How thick was this file, so to speak?

**Dr MacMillan:** I had, you know, a fair amount of information in there. I had information about cardiology services in the north. I had the files of some of the cardiologists. Several of these physicians I had been in communication with on the phone. My records do not indicate the dates because they phoned me. In fact, the major doctor who was giving the major part of the presentation, the head of the department of cardiovascular services in Sudbury, Dr Abdulla, I had his file, I recall, because of his expression of concerns about the whole department and how they would be affected.

**Mr McGuinty:** Dr MacMillan, with respect to Dr Donahue's file specifically—

**Dr MacMillan:** Yes?

**Mr McGuinty:** —how thick was it?

**Dr MacMillan:** I said several pages.

**Mr McGuinty:** What does that mean?

**Dr MacMillan:** About two or three pages. I have it here, but the committee may not wish to have it as an exhibit.

**Mr McGuinty:** Perhaps you could tell me, just generally speaking, what percentage of physicians on an annual basis are investigated by the MRC?

**Dr MacMillan:** What percentage?

**Mr McGuinty:** Yes, practising physicians.

**Dr MacMillan:** I believe there were about 60 to 70 cases referred per year in the last couple of years.

**Mr McGuinty:** Out of?

**Dr MacMillan:** We told you there was a backlog of about 130—

**Mr McGuinty:** Right.

**Dr MacMillan:** —and taking, on average, 23 to 26 months to finally get the decision of the MRC.

**Mr McGuinty:** That is 60 to 70 cases out of how many? Each case deals with one physician?

**Dr MacMillan:** Yes, out of about 20,000 physicians.

**Mr McGuinty:** So a very small percentage really.

**Dr MacMillan:** Very small.

**Mr McGuinty:** There have been references to a leak in the media. There has been reference to a leak by the minister in the House, the Minister of Health. Are we talking about the same leak? Are we talking about information relating to Dr Donahue or is there another leak?

**Dr MacMillan:** I have no idea.

**Mr McGuinty:** Do you have any information that would lead you to believe that there is another leak relating to—

**Dr MacMillan:** No, I do not.

**Mr McGuinty:** Do you have any inkling as to how—was it a Toronto Sun reporter who had contacted you, Dr MacMillan—that reporter would have gained access to any of the information in the e-mail?

**Dr MacMillan:** No, I have no idea.

**Mr McGuinty:** I am through, Mr Chair. Thank you, Dr MacMillan.

**The Chair:** Thank you very much. For members of the official opposition there is still some time. Mr Conway.

**Mr Conway:** Thank you very much, Mr Chairman. Dr MacMillan, very good to see you again. I have really enjoyed your testimony. I regret I was not able to hear it all.

I am anxious to explore one area briefly, trying to understand the context, the environment in which the so-called Martel affair is evolving. Pardon me if in fact you have dealt with some of this while I was not present. You yourself have referred to the unfortunate circumstances surrounding the release of information that caused the resignation of the previous Minister of Health. I would like to just briefly ask you a couple of questions about the environment, to the extent you can talk about that.

Would I be correct in stating that there had developed in the weeks leading up to the unfortunate incident that caused the resignation of the former Minister of Health, the member for Ottawa Centre, something of a difference of opinion between very senior officials in the Ontario



Ministry of Health and the Minister of Health's office around any protocols that may have in fact been in place regarding the availability of very confidential medical information?

**Dr MacMillan:** No, I do not think that there was any difference in the transmission of information for briefing notes or whatever to the minister's staff. Maybe I am misreading your question.

**Mr Conway:** You are not aware of any tension or any rather significant difference of opinion that had developed in the Ministry of Health—that is, the bureaucratic side of the Ministry of Health—regarding protocols which may have been in existence having regard to, for example, the availability of names in the minister's briefing notes?

**Dr MacMillan:** My office, as you know, is in Kingston and I am, I guess, a little more insulated from the interaction between ministry staff and bureaucrats. I am aware of a change in policy with respect to how a briefing note was constructed with the last minister that has since been changed back to a way that would add protection of a minister from giving out sensitive information. I am looking to the Chairman to see whether we are still under the terms of this hearing. I want to be cooperative but it seems like we are talking about issues at the time of Minister Gigantes rather than the time of—

**Mr Conway:** I am trying to understand. You yourself have raised, I think quite appropriately, the Gigantes matter on a couple of cases. I am trying to understand the environment in which this case took place. I can well imagine the trauma around the place after the so-called Gigantes affair. I have a very keen appreciation for just how traumatic that would have been. You indicated, though, a moment ago that there had been a change that has since been changed back to the way it had been before the so-called Gigantes affair. Could you elaborate a bit as to the cause and the nature of the first change in protocol, having regard to how it is sensitive medical information may have gone forward to the Minister of Health's office?

**Dr MacMillan:** Yes. It is fairly simple. With Minister Gigantes, where information was being sent any sensitive information had an asterisk beside it. The previous way, under the previous government, had been to put a sheet at the back, "Confidential to the minister." Following the investigation of the privacy commissioner and the inadvertent release of a patient's name, any confidential information that is necessary now and since that time has been added as a final sheet, "Confidential to the minister." That is where there is confidential information to the minister. I think the majority probably of briefings do not have anything other than the general information that presumably the minister takes into the House.

1200

**Mr Conway:** Having heard that then, I want to just conclude by asking again for a quick summation of what I believe happened then, according to what you have already indicated in the case of the e-mail matters: that on request of the office of Dr LeBlanc, an office that is very closely associated with the office of the ministry, for the reasons that you have given in terms of the flow back and forth of

information—stop me at any point if I am misstating what I believe you have either said or left an impression of—on the request of the office of Dr LeBlanc, someone in OHIP at Kingston prepared and caused to be sent to Dr LeBlanc's office e-mails which contained information, some of which was subjective, having to do with certain kinds of medical information involving practitioners in Ontario, and that information somehow came into the possession of at least, among others, the exempt political staff working in the office of the Minister of Health.

**Dr MacMillan:** I have told you to the best of my knowledge that someone in the minister's staff received it, but I still do not accept the fact—and others will judge—the total impropriety of such a person assisting in the development of a briefing note.

**Mr Conway:** My point in raising the question, having spent years of my life as a cabinet minister, I am trying to understand the flow of this information. I was led to believe when Mr Harris asked the question in the Legislature on December 9 that the minister, who could not have been more categorical—we were led to believe that that was a very closed circle.

I will not take you through the testimony again, but I carefully listened. I certainly respect the minister and I know how these things can happen, but I took her answer to mean that there was no breach in a very tight circle that essentially incorporated only the OHIP office. Now I understand that a series of e-mails had been asked for and sent with a variety of information that, believe me, I can well imagine the contents of, and that e-mail information was circulated, among other places, in the office of the Deputy Minister of Health, and more important, from my point of view, it found its way to some of the exempt political staff working for the Minister of Health, among others.

**Dr MacMillan:** I do not know what you mean by "exempt."

**Mr Conway:** That is the minister's personal staff. Mr Corea—

**Dr MacMillan:** What are they exempt from?

**Mr Conway:** They are the minister's personal staff. I am talking about—

**Dr MacMillan:** Non-civil servants.

**Mr Conway:** —non-civil servants, political aides to the minister. My point in asking that question is that I had initially been led to believe that that kind of information was tightly controlled, and it did not breach the OHIP circle. Now I know, apparently—correct me if I am wrong—that those e-mails found their way into the hands of the political assistants to the Minister of Health.

**Dr MacMillan:** At the time when I was making efforts on December 11 to retrieve the documents I had no knowledge of anyone on the minister's staff having received it.

**Mr Conway:** I appreciate that, Doctor.

**Dr MacMillan:** No, wait a minute; let me finish. I believe I would have been especially interested in that, and I do not believe anybody led me to believe that someone had it. I cannot remember for certain, though. The first



time I knew that someone in the minister's office might have had it was when I read it in the Toronto Star in January. I have not approached Mr Corea to interview him or to discuss the matter with him, so, still, my knowledge about the possibility of someone in the minister's office having it is no better than yours.

**Mr Conway:** Listen, I do not think you should feel defensive about anything. I am not questioning your testimony or your motivation. All I want to conclude with is that, on the basis of what you have now told us and what we now know, there came a point in time in December 1991 when the minister's personal staff had access to that

e-mail information, which my colleague from Ottawa South has raised more extensively.

**Dr MacMillan:** I do not know. It would appear to be the case, but I do not have any direct knowledge.

**Mr Conway:** Thank you.

**The Chair:** Thank you, Mr Conway. That brings to an end the 60-minute allocation to the opposition caucus. It also, being cognizant of the time, brings us to 1207. I would like to adjourn until 2 pm, at which time the third party shall commence questioning.

The committee recessed at 1207.

## AFTERNOON SITTING

The committee resumed at 1405.

**The Chair:** We will reconvene for the afternoon session. When last we left, the official opposition had completed its questioning of Dr MacMillan. It would now be for the third party to commence its questioning. I remind all members of the committee that it was the intention, and still remains the intention as per the subcommittee, that the questioning per caucus would be limited to an hour or thereabouts. On that basis I will open this up to Mr Harnick.

**Mr Harnick:** Doctor, I was interested in your discussion with Mr McGuinty, particularly when he asked you what prompted the request for the preparation of the e-mail. Your answer to him was that the e-mail was being prepared for a priority briefing, and because there had been inquiries from the minister's office. In addition, you said that the Treasurer wanted the details and because of that there was a degree of urgency. Does that reflect accurately what you said?

**Dr MacMillan:** No, not accurately. I said that my knowledge of what it was required for was a priority briefing. That knowledge did not go beyond that, other than the fact that I was aware of a morning interview that had been made on CBC in Sudbury with Dr Donahue, and we subsequently received a transcript of that interview. I had no knowledge as to who was making the request, other than it was for priority briefing, and indeed subsequent evidence may contradict what I am saying because I am telling you what my impression was. I only recently found out, as I indicated in my evidence this morning, that—secondhand knowledge, hearsay, I was told—that there were calls being made to someone from the Treasurer's office or his constituency riding, because of numerous calls and letters and so on that the Treasurer, representing that riding, was apparently getting. That is all I know. I did not see any memos. There may be some, but I have not seen any directly.

**Mr Harnick:** It is fair to say, I gather, that once all this started to happen you made certain investigations and certain inquiries. One of those inquiries led you to the belief that the Treasurer wanted details, and that is one of the reasons the e-mail was prepared. That is what you told us this morning now.

**Dr MacMillan:** I just found that out a couple of days ago. I did not know at the time who was requesting the information.

**Mr Harnick:** That is right. But all I am asking is to confirm that in fact the Treasurer wanted the details that were contained in the e-mail. That is what you told us this morning.

**Dr MacMillan:** If we are going to argue about it, I would like you to read my testimony, because I did not know anything about the Treasurer wanting information. At the time I only told you that I had found out incidentally, in the last couple of days, that someone told me the Treasurer had been eager to have information about the issue because it was in his riding. That is all I know.

**Mr Harnick:** That is all I want to know. I do not care whether it was the day of, or the day after, or two days ago, you subsequently found out the Treasurer wanted the information and you are now confirming that that is so.

**Dr MacMillan:** I think I have explained it, Mr Chairman, to the best of my abilities.

**Mr Harnick:** As well, because the Treasurer was requesting the information, you indicated that there was a degree of urgency, or more urgency than would usually be the case.

**Dr MacMillan:** No, I am not going to let you put words in my mouth.

**Mr Harnick:** Well, that is what you told us.

**Dr MacMillan:** Well, let me tell it again then, because if that is exactly how I said it, I erred.

**Mr Harnick:** If you want to change what you said, I am giving you the opportunity to do that.

**Dr MacMillan:** It is your opinion about what I said, compared to my opinion about what I said.

**Mr Harnick:** Is there any way, Mr Chairman, that we can get a copy of—

**The Chair:** We have requested that there be Hansard of these on an A-priority basis. That order and request has already been made and we already do that. I would just caution all members of the committee that in their posing of questions to witnesses they should wait for the response from those witnesses.

**Mr Harnick:** Doctor, we know that through your investigations the Treasurer had an interest in this and he wanted the details and that the e-mail was prepared. However, in the list of people whom the e-mail was sent to, I do not see the Treasurer listed. When was this material sent to the Treasurer?

**Dr MacMillan:** I have no idea whether it was sent to the Treasurer or not.

**Mr Harnick:** Can you undertake to make some inquiries for us, because if your inquiries indicated the Treasurer wanted the material, I suspect that somewhere along the line, because you were doing it promptly to fulfil his request, the information would have ultimately been provided to the Treasurer.

**Dr MacMillan:** I was not doing anything to promptly—

**Mr Harnick:** Well, you were away that day, but your people were there and they were preparing the e-mail.

**Dr MacMillan:** Yes.

**Mr Harnick:** And your information is they were preparing it with a sense of some urgency because the Treasurer made certain requests for information.

**Dr MacMillan:** No, you are wrong again. My staff did not know, to my knowledge, that the Treasurer was wanting some information about this matter. My staff who were preparing the e-mail were preparing it, I believe, on the assumption that it was a routine priority briefing because



of increasing media discussion about Dr Donahue and the thresholds.

**Mr Harnick:** Can you tell me then who told you that the Treasurer wanted the details?

**Dr MacMillan:** I believe it was Dr Eugene LeBlanc.

**Mr Harnick:** And would the Treasurer, to the best of your information, have requested the information from Dr Eugene LeBlanc?

**Dr MacMillan:** No, I do not know who requested it of Dr LeBlanc or his office or his staff. I have not seen, I told you, any e-mail or know of any e-mail, but apparently Dr LeBlanc's office at some time was made aware that in addition to the minister, I guess, the Treasurer or someone from the Treasurer's office had phoned to get information about this issue.

**Mr Harnick:** Do you know what was sent to the Treasurer?

**Dr MacMillan:** No, I told you already I do not know whether anything was sent to the Treasurer. I presume something must have been sent to the Treasurer, but I do not know.

**Mr Harnick:** All right. Now, doctor, this whole episode really began when Dr Donahue said he was about to close his practice, and I think that was on November 8, 1991, on MCTV. Is that correct?

**Dr MacMillan:** I would have to look it up. I will accept your date if you have it before you.

**Mr Harnick:** All right. Then, as well, there was a radio broadcast on the 8th or 9th that basically involved Dr Donahue and said the same thing. Is that your information?

**Dr MacMillan:** If I can just have a moment, Mr Chairman.

**The Chair:** Yes, doctor. Mr Harnick, I believe Dr MacMillan wants to just refer to some of the exhibits to make certain as to the dates.

**Mr Harnick:** Sure.

**Ms Jackson:** I think exhibit 10 and exhibit 11.

**Dr MacMillan:** The correction is that on the 8th there was an article about epilation on MCTV channel 4 Sudbury. Several days later on November 13 at 7:35 on Morning North, CBC Sudbury, there was an interview with Dr Donahue.

**Mr Harnick:** That is really when the whole incident began as far as you were aware. Is that correct?

**Dr MacMillan:** No, I think there was earlier press that I was aware of, where Dr Donahue was threatening to close his practice. I cannot recall the dates. I can look them up.

**Mr Harnick:** All right. Then it was after that that the e-mails were prepared on November 13, pretty much in response to what Dr Donahue had been saying.

**Dr MacMillan:** Yes.

**Mr Harnick:** My list indicates that they were distributed to McArthur, LeBlanc, Allen, Jones, Quinn, Kovacs, McBride, Teatero, Dave McNaughton, Larry Corea, the reporter at the Sun and a reporter at the Star. Is that essen-

tially where you found out all of the e-mail copies had gone to?

**Dr MacMillan:** Some of that I knew to be a fact and some of it you concluded that I heard by rumour or newspaper article to be the case. I have no proof of several of the people you have named there that were in receipt of the document.

**Mr Harnick:** Because I got all these names based on the information you gave us yesterday.

**Dr MacMillan:** Well, I know you got all the names. But you did not get them all in that tone: that I had proof that every one of those persons had it. I have been quite clear on that, that I knew whom it was sent to and I talked to some of them. I immediately made efforts to retrieve the document. I felt I had fulfilled my duties and felt the information had been contained. It is only subsequently that people are coming forward either alleging or agreeing that they have had further knowledge of the memo.

**Mr Harnick:** Well, at any rate, you do not quarrel with the fact that you gave us that list yesterday?

**Dr MacMillan:** I gave you those names yesterday in various contexts.

**Mr Harnick:** That is fine. And it was after that that you in your confidential notes respecting Sudbury visits—I guess it is exhibit 16—made mention of physicians in Sudbury becoming vocal and that you really had a significant concern at that stage.

**Dr MacMillan:** Yes.

**Mr Harnick:** On page 1 of that document that you prepared—just let me digress for a moment. You prepared that document yourself?

**Dr MacMillan:** Yes.

**Mr Harnick:** I wonder why in the course of the preparation of that document you keep referring to yourself as Dr MacMillan. Why not "I" and "me"? "Dr MacMillan did this, Dr MacMillan recalls that." Why do you not just say "I recall" or "Somebody spoke to me," as opposed to "Dr MacMillan"?

**Dr MacMillan:** I do not know. I just put it in as the impersonal, so all the facts and all the names were known.

**Mr Conway:** Past presidents of the OMA have certain prerogatives, Charles.

**Dr MacMillan:** There was no particular reason. I prepared the notes entirely myself. In fact, the first notes I remember preparing and assimilating on the airplane coming to Toronto. That is why they are dated December 11. The other notes I wrote down later around December 21 and signed them. That was simply because I know from my experience that memory serves you better closer to the events.

**Mr Harnick:** Well, I am interested—on the first page, you talk about: "Dr MacMillan recalls having read some of the media statements attributed to Dr Donahue in which certain allegations and views were expressed about his own personal situation. As a result of this erroneous material, Dr MacMillan phoned Dr Donahue to correct his understanding of the impact of the threshold on his income and



offered to meet with him." So I gather that after you had heard what Dr Donahue had been saying, you then did some work on your own to determine that what he was saying was erroneous?

**Dr MacMillan:** To determine whether or not the statements he was making about how he was affected were correct. I found out, by virtue of retrieving data, that he was in error as to how the threshold would affect him. Very significantly in error.

**Mr Harnick:** And the data that you would have been retrieving would have been data pertaining to his income?

**Dr MacMillan:** Yes.

**Mr Harnick:** And his billings?

**Dr MacMillan:** Yes, and his coverage for a portion of the year under the underserviced area program.

**Mr Harnick:** Which I gather was ending that very year, I think, in around November or December.

**Dr MacMillan:** September 1.

**Mr Harnick:** Or September 1.

**Dr MacMillan:** That is right.

**Mr Harnick:** Whom did you discuss this erroneous information with, once you determined that the information was erroneous?

**Dr MacMillan:** I discussed the interpretation of the data with staff who had prepared them for me. I am not certain. It would probably be Dr Kovacs. I think I got probably from Dr LeBlanc's office his coverage under the underserviced area program, and I called Dr Donahue to give him the information I felt he was not in receipt of or had misinterpreted.

1420

**Mr Harnick:** From the very outset, from the day you determined that the information Dr Donahue had been speaking publicly about, to whom have you explained that this information was erroneous? With whom have you discussed the fact that his information was erroneous?

**Dr MacMillan:** I would have probably, in generalities, discussed it with the deputy minister when we went to Sudbury.

**Mr Harnick:** How could you discuss something like that in generalities?

**Dr MacMillan:** I am discussing it with you in generalities.

**Mr Harnick:** Except that would you not have had to sit down with the deputy minister and explain to him what the figures were and why it was erroneous? Would he have not been interested in that?

**Dr MacMillan:** It is interesting you should ask, because it would certainly be proper for me to do so, but I chose not to and Mr Decter chose not to ask me. I would protect that information from the deputy minister, just as I would from directly to the minister, in order that inadvertently they not release it. So I did not discuss details of Dr Donahue's billings with anyone other than Dr Donahue and the staff that had prepared it for me.

**Mr Harnick:** So you never told the deputy minister why the things Dr Donahue was talking about were erroneous.

**Dr MacMillan:** No, not in detail.

**Mr Harnick:** I gather the next stage of this was when you spoke to Dr De Blacam and the first meeting was arranged, which I gather was on the Saturday morning.

**Dr MacMillan:** Yes. That meeting had nothing to do with Dr De Blacam.

**Mr Harnick:** But you had been speaking with him and you had the first meeting arranged and you tried to combine them.

**Dr MacMillan:** Yes.

**Mr Harnick:** But the meeting with Dr De Blacam really came about a week or so later.

**Dr MacMillan:** Yes, the following Thursday.

**Mr Harnick:** In order to attend the first meeting, what preparation did you do in terms of files you prepared? What documents did you prepare to take to that meeting?

**Dr MacMillan:** I have already indicated that I took several physicians' billing information because of the desire for me to be of assistance in explaining their situation. There was a fair amount of hype that I thought they were in some cases misinformed. In some cases they were going to be very severely affected by this alteration in cash flow. For those physicians who were affected to a great degree, the first withdrawal of payments would have been made on their mid-December cheque, and therefore I took information relating to when the threshold would be reached, to what extent we would be withdrawing money from their normal flow of cash and being able to be, as head of the billing agency and the dealings with physicians, in an intelligent way of assistance to them. That was the only purpose and the only documents I had.

**Mr Harnick:** This information you had, was it confidential?

**Dr MacMillan:** Yes.

**Mr Harnick:** I gather you went to this meeting, which was a public meeting in nature—there were many doctors there, there was—

**Dr MacMillan:** Are you talking about the—

**Mr Harnick:** The Saturday meeting.

**Dr MacMillan:** The Saturday meeting was not a public meeting, no.

**Mr Harnick:** The Saturday meeting was the meeting at the hospital?

**Dr MacMillan:** Yes. There were, I said, about 17 people there, who were either physicians on staff, hospital personnel, the MPPs and a few staff people I have already indicated, plus the three of us from the ministry.

**Mr Harnick:** And you had the confidential information with you at that meeting.

**Dr MacMillan:** Yes.

**Mr Harnick:** But you did not make use of it at the meeting.

**Dr MacMillan:** No.



**Mr Harnick:** And you never used that information prior to the meeting in your breakfast with the MPPs?

**Dr MacMillan:** No.

**Mr Harnick:** And you never used it after the meeting with your lunch with Miss Martel.

**Dr MacMillan:** No.

**Mr Harnick:** But you took it with you anyway.

**Dr MacMillan:** Yes, and I have given the reason for that is because I was on the phone to several of these doctors on several occasions. In fact I believe Dr Donahue even phoned me back. I cannot prove that, but it is in my memory that he did.

You have to understand these were collegial conversations, I am sure you will be able to prove, that demonstrated a willingness on my part, as a physician understanding how severely certain doctors were going to be affected, to discuss with them their billings. I mean, I had in my possession information that I realize in this province is extremely confidential, and I was holding it for use only to talk with the individual doctors.

**Mr Harnick:** Did you speak with individual doctors on the Saturday morning that you were there?

**Dr MacMillan:** Yes, but never on a one-to-one basis.

**Mr Harnick:** That is what I mean. You never intended to go there and meet with individual doctors privately and review their files?

**Dr MacMillan:** Yes, I did. I went—

**Mr Harnick:** Did you do that?

**Dr MacMillan:** I was not requested by any of the doctors I met to do so.

**Mr Harnick:** I see. So you took that material but you made no use of it?

**Dr MacMillan:** That is correct.

**Mr Harnick:** All right. Doctor, in your note you talk about "looking for viable solutions to prevent withdrawal of services by Sudbury physicians." That is what the mission was really all about.

**Dr MacMillan:** For my part, it was certainly looking to assist in the evolution over this difficult period for certain physicians, yes. I had been charged with administering this new agreement with the thresholds, and it was fine to adopt the general policy, but I was the one who of course ended up dealing, as Eugene LeBlanc did, with the numerous phone calls and letters and discussions with physicians into the most intricate detail into their billings, how they would be affected, how they could be helped and so on.

**Mr Harnick:** Your biggest concern was that the doctors were very upset, and it would have been a very major problem if they began to withdraw their services?

**Dr MacMillan:** Yes.

**Mr Harnick:** That would impact very much on the Ministry of Northern Development, would it not?

**Dr MacMillan:** I never thought about that. How would it—it would affect the health care of the people in the north.

**Mr Harnick:** Would that not be something that would be of very great concern to the Minister of Northern Development?

**Dr MacMillan:** I presume it would be, yes.

**Mr Harnick:** That is why she was involved in the discussions with you.

**Dr MacMillan:** I think it was also her riding.

**Mr Harnick:** It was her riding and it was also the responsibility she had for the whole of northern Ontario.

**Dr MacMillan:** Yes.

**Mr Harnick:** And in fact she was more intimately involved with dealing with your ministry than either Mr Laughren or Ms Murdock would have been because she had a greater responsibility in her role as minister.

**Dr MacMillan:** Yes.

**Mr Harnick:** You had a second meeting, I gather early in December, that would have been on December 5, and your first meeting, I understand, was November 25, one dealing with the cardiologist, the second one dealing with doctors generally?

**Dr MacMillan:** The 29th.

**Mr Harnick:** The 29th?

**Dr MacMillan:** And 30th. The meeting was on the 30th.

**Mr Harnick:** Up to this time, had you ever spoken with Miss Martel, Mr Laughren or Ms Murdock?

**Dr MacMillan:** The morning at breakfast was the first time I ever met them or spoke to them.

**Mr Harnick:** That would have been the Saturday morning when you had breakfast with the three of them.

**Dr MacMillan:** That is right.

**Mr Harnick:** Can you tell me what discussion you had at that breakfast with Miss Martel? What were her concerns as put to you?

1430

**Dr MacMillan:** My recollection, as I have tried to indicate, was that the sole topic of discussion that I can recall was about the access to services, the threat of withdrawal of services and in particular, in the majority of the conversation, dealing with the cardiovascular surgeons and the cardiologists, who had publicly and of course to us in more detail expressed their grave displeasure about the threshold and how it would affect their program and I guess their incomes.

The whole discussion that morning, as I remember it, was simply in preparation for these three MPPs, who I guess had certain amounts of information about the issue but had never, to my knowledge, sat down with people who were experienced and charged with administering the agreement and the threshold. It was simply a natural meeting that I saw with politicians who were responsible for programs in the government position, and the bureaucrats have the information.

**Mr Harnick:** In the course of that discussion—and you told me some of it dealt with the concern about withdrawal



of services or access to services—was Dr Donahue mentioned at the breakfast meeting?

**Dr MacMillan:** I have been asked that question several times. I hope I am making it clear to you that I have indicated that I do not recall his name being mentioned at the breakfast. It may have been. I said that it most definitely was at noon. The night before was the big newspaper articles, front page in the Sudbury newspaper. If someone suggested his name was mentioned in the morning, I would not be surprised, but I do not recall it.

**Mr Harnick:** You had with you at that breakfast the confidential documents?

**Dr MacMillan:** Yes.

**Mr Harnick:** But they were never—

**Dr MacMillan:** They were never taken out of my briefcase.

**Mr Harnick:** All right. You then attended at the meeting, and you have told us about the meeting. Can you recall anything at all about anything Miss Martel said at that meeting?

**Dr MacMillan:** I cannot recall anything specific. I was with Dr LeBlanc, who tends to speak quite a bit, and Dr LeBlanc seemed to dominate the conversation. In fact, I remember saying that his eggs were getting cold. I cannot remember—

**Mr Harnick:** No, I am talking about the meeting now.

**Dr MacMillan:** I am talking about the meeting—

**Mr Harnick:** No, the meeting itself.

**Dr MacMillan:** Oh, the meeting at the hospital?

**Mr Harnick:** Yes.

**Dr MacMillan:** Minister Martel was chairing the meeting. The most part of the meeting was a presentation. There was some written material that was handed out. I do not have that, but I am sure it could be obtained. It generally described the cardiovascular program in the north, which is the only cardiovascular program in a non-teaching centre—

**Mr Harnick:** I just want to know what she may have said.

**Dr MacMillan:** Oh. Well—

**Mr Harnick:** Other than moderating the meeting.

**Dr MacMillan:** I cannot remember.

**Mr Harnick:** All right. Now—

**Dr MacMillan:** I cannot remember specifically. It was all about cardiology and the Sudbury Memorial Hospital. No other topic was discussed.

**Mr Harnick:** Generally, in terms of disclosure of confidential information, can cabinet see doctors' billings if they request it?

**Dr MacMillan:** The Minister—

**Mr Harnick:** Is there anything wrong with cabinet, if they are having a cabinet meeting, saying: "We would like the billings of all these doctors. Deliver them so we can review them at our next cabinet meeting"?

**Dr MacMillan:** The Minister of Health can request that, but I am not an authority and I have never experienced

such a request. My opinion would be that I would have to probably have the Premier phone me before I would release anything.

**Mr Harnick:** Would there be anything wrong with the Minister of Northern Development seeing the health files if it would relate to her portfolio?

**Dr MacMillan:** Yes, there would. She has no authority, any more—any other minister, to me, would have the same status as a person coming in off the street.

**Mr Harnick:** What if the Minister of Health said that it was proper and it related to the other minister's portfolio?

**Dr MacMillan:** If the Minister of Health asked me for something, I guess I would not question, although I would advise the Minister of Health, but my advice would be that she would be probably improperly providing information if it went beyond her.

**Mr Harnick:** I gather that you had lunch with just Miss Martel and the three ministry officials.

**Dr MacMillan:** Yes.

**Mr Harnick:** What discussion did you have at that time with Miss Martel? Specifically, what did she tell you?

**Dr MacMillan:** I will relate that I recall a general, continued discussion about the cardiology services. We informed her how the threshold agreement would impact on them. We explored potential government policy changes that could reduce the problem, reduce the risk and the very specific and serious problem that we were facing. Indeed, one of the options that was discussed at that luncheon, among others, was eventually adopted, and that was to expand the notion of the underserved area program to include any physician who was in that designated underserved specialty.

I recall then talking about what we could do, what possible things we could take back for discussion in our ministry, and we assured the minister that we were going to do that. For her part, providing us with information, I think it was more questions in general about the issue, her demonstration of what I believed a very sincere wish to assist in reducing this access problem.

**Mr Harnick:** From what you told us earlier, this is the first day that you met Miss Martel. At that luncheon, in your memo on page 3 you specifically state, "His plight was discussed," meaning Dr Donahue.

**Dr MacMillan:** Right.

**Mr Harnick:** Obviously you were talking about the things that Dr Donahue had been saying, and I suspect you may have had some discussion with Miss Martel about the validity of the things Dr Donahue was saying if you were discussing his plight. Is that not correct?

**Dr MacMillan:** I might have indicated that it was not as bad as was being portrayed in the press and that I was hopeful that even though his office was closing we would be able to assist him and not have him leave town, which of course he had threatened to do. I did not provide any detailed information. I did not pull out any figures or facts from my briefcase. I was not asked nor was there any probing by anybody, in particular by her, about what he made or his particular status. We talked about dermatology



services in Sudbury in general, and the impact of his leaving, what would happen, how the underserved area program could help and so on.

**Mr Harnick:** Did you not explain to her why the things he was talking about were erroneous?

**Dr MacMillan:** I do not recall, but if I did, it would not have been any more than I have explained; that is, he was on the underserved area program till September and apparently did not recognize that—certainly the information in the newspapers did not seem to acknowledge that—and that the epilation issue I have told you about which—

**Mr Harnick:** But in a general way, would you not have had to tell her—

**Dr MacMillan:** I just want to finish because you have asked me, and I want to say that the epilation issue was also possibly discussed and the fact that, with the Ontario Medical Association, we had determined to make that a technical fee. Therefore, he would have immunity from that portion of his income made from his epilation services. That is the extent to which—

**Mr Harnick:** So you did speak about his income in that sense?

**Dr MacMillan:** I spoke about just what I told you I spoke about. I did not mention his income.

**Mr Harnick:** You did not need the files to know what the numbers were. I suspect that you were well acquainted with Dr Donahue's situation.

**Dr MacMillan:** I was aware of—I might not have been precise in the numbers. There are a lot of numbers: how much are technical fees, how much are gross fees, how much is going to be deducted on whatever month, what is the eventual total amount of money that would be deducted by the end of the year. There is more than one figure. I would have had those available if I had met with Dr Donahue, which I did not.

**Mr Harnick:** Some time later you told us about your encounter with Evelyn Dodds. I suspect it would not be wrong to categorize her getting up at that meeting and her discussion with you as being somewhat shocking to you at the time. Is that correct?

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**Dr MacMillan:** Yes.

**Mr Harnick:** The things she told you were things you had heard before. Is that correct?

**Dr MacMillan:** No. That is the first I had heard of that. On the morning of December 6, when she related her conversation with the minister, I had no knowledge of that conversation until she got up and announced it.

**Mr Harnick:** How much similarity was there between what she told you and what was contained in the e-mail?

**Dr MacMillan:** I hesitate giving an opinion on that. It was not exactly similar; it was not exactly different. I think the committee is going to be reviewing the contents of the e-mail and it might be better that it make its own judgement on that.

**Mr Harnick:** Is it safe to say that some of what Mrs Dodds related was contained in the e-mail?

**Dr MacMillan:** Only to the extent that it was no secret that the doctor was—

**Mr Hope:** Excuse me, Steve—

**The Chair:** Mr Hope?

**Mr Hope:** Is this not getting into something that may be pertaining to the confidential information? You are asking somebody to convey something and I guess we are all waiting to see what is there.

**The Chair:** No, I think it is clear, as we went through in the morning, if there is a—

**Mr Hope:** You are trying to compare two documents, public information and private information.

**The Chair:** Thank you very much, Mr Hope. Dr MacMillan has counsel and as we discussed earlier this morning, in the event there is a concern with respect to any release of information which is of a confidential nature, that will be taken up in the proceedings in camera, if it is determined that we will be going in camera. As I understand it, we will in fact be moving in camera.

I recognize in the morning a question was posed by, I believe, Mr McGuinty where there was a concern as to the content of the answer. It was indicated at that time that the question could again be posed when the proceedings move in camera. Seeing that there was no concern raised by Dr MacMillan and counsel to the committee, then certainly Dr MacMillan and counsel are quite prepared to provide whatever information they can on a non-confidential basis.

**Mr Page:** I should say that I had similar concerns that the member just raised about getting into this questioning about the e-mail in specifics.

**The Chair:** If there is a concern, as we know, there will be opportunity to proceed in camera. I would then ask Mr Harnick to make note of the question he was prepared to ask and we will ask that question on an in camera basis.

**Mr Harnick:** I am still prepared to ask that question, because I am not asking for any details; I am asking, were there elements of what Mrs Dodds told you at the meeting in Toronto that were similar to what was contained in the e-mail? It is a yes or no answer.

**Dr MacMillan:** Could I ask you what elements you are talking about?

**Mr Harnick:** No.

**Dr MacMillan:** I cannot comment. The only similarity that I recall is that—

**The Chair:** It may very well be that, without taking away from the question and answer, if there are concerns with respect to the response, then the matter could be referred to the in camera proceedings.

**Mr Harnick:** There is another way I can come at that, Mr Chairman.

**The Chair:** Thank you, Mr Harnick.

**Mr Harnick:** Were you particularly surprised by the content of what Mrs Dodds said, or had you heard those things before?

**Dr MacMillan:** I cannot answer that question because I would have to divulge my knowledge of what is in the e-mail and other matters that are still confidential.



**Mr Harnick:** No, I am just saying—

**Dr MacMillan:** I cannot answer that question.

**Mr Harnick:** You cannot just say whether “I was surprised” or “I was not surprised.” I mean, that does not divulge the contents of anything.

**The Chair:** Mr Harnick, I think you will recall in sub-committee that in the event that there is a question posed that might in its response divulge confidential information, that matter would be set over to the proceeding in camera.

**Mr Harnick:** I was quite content with that as long as I really believed there was something that was going to be divulged. What I am asking this witness does not divulge anything of a confidential nature.

**Mr Page:** Surely that is a matter of what the answer is.

**Mr Harnick:** I am not going to push it.

Interjection.

**Mr Harnick:** I am somewhat surprised that a question like that cannot evoke a response.

**Dr MacMillan:** Mr Chairman, he is asking me for an opinion.

**Mr Harnick:** Those are all the questions I have.

**Dr MacMillan:** The document will be before him and he can form his own opinion when he sees the similarity. I do not think I have an answer.

**Mr Harnick:** With respect, there are a limited number of people who are going to see that document. There are a whole lot of people in this room who might be interested in your answer.

**The Chair:** Mr Eves.

**Mr Eves:** First, to clear up the point about the Treasurer's request, I think it is appropriate to read into the record what you said about the Treasurer's request on page 1105-2 of this morning's transcript. You indicated that you had just received this information a couple of days ago as a result of talking to Diane McArthur, I believe, and you go on to say, “I was led to believe that the Treasurer also wanted details of the matter, and that is why, in part, apparently there was a degree of urgency felt by staff in getting the information and preparing it.”

**Dr MacMillan:** Yes, thank you.

**Mr Eves:** I would like to pursue a few general areas, and I will try to make this as organized as possible. How many physicians in Ontario are affected by the billing cap, in general numbers?

**Dr MacMillan:** Originally it appeared as if there were about 600, but as we have been able to obtain more information about the particular physician's practice, to the degree to which the traditional technical fees would be deducted or exempted and the degree to which the new and added technical fees that were determined would be exempted, I believe we are down now to something less than 400 physicians.

**Mr Eves:** How many of those would be in northern Ontario roughly?

**Dr MacMillan:** I know the figures for the Sudbury area. There are about 17 physicians that would be affected in the Sudbury area with the original plan at that time. As I have indicated to the committee, there has been a subsequent expansion of the definition of “underserviced area,” but originally there were 17 doctors in Sudbury and maybe from Thunder Bay another similar number.

**Mr Eves:** To your knowledge were there any memos, e-mails, briefing notes, letters, reviews of any kind done on any other physician in northern Ontario or the Sudbury area besides Dr Donahue?

**Dr MacMillan:** We are doing it on every physician in the province to determine—and we must do that to program the computer as to when the physician, by virtue of his billings, will reach the threshold. So that type of analysis is done by my staff all the time, but I have no knowledge of any of that information leaving my department.

**Mr Eves:** Were there any MRCs or reviews done on any other physician in northern Ontario other than Dr Donahue?

**Dr MacMillan:** What do you mean by MRC?

**Mr Eves:** Medical review committee.

**Dr MacMillan:** We traditionally use the letters MRC for the medical review committee of the College of Physicians and Surgeons which I described yesterday. To my knowledge, no one from OHIP, the health insurance division, which is privy to that information, has released any information on any physician who is before the medical review committee other than to the authoritative people within the ministry or to the medical review committee itself.

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**Mr Eves:** At any of the meetings that you attended in Sudbury, be they in November or December, at any time were files containing specific information on physicians passed around or shared during the course of the meeting?

**Dr MacMillan:** No. None.

**Mr Eves:** You are absolutely certain of that.

**Dr MacMillan:** I am absolutely certain.

**Mr Eves:** The meetings in Sudbury on November 29, I believe it was—there has been some discussion as to whether Dr Donahue's name came up in the course of conversation or not, and there has been some discussion of whether a physician's billings and the cap were mentioned. You have indicated, I believe, that Mr Rodriguez, the federal member, was the only individual who requested such information—

**Dr MacMillan:** Yes.

**Mr Eves:** —or wanted that specifically. That is correct?

**Dr MacMillan:** Yes.

**Mr Eves:** I want to talk a little bit about the conversation you had with Mrs Dodds at the conference that she was attending, and about your conversation with Mr Ferguson and your conversation with Anne Dawson.

You have indicated—and if I am paraphrasing you incorrectly, please correct me. I believe that you have generally indicated to the committee that in your conversation with Mrs Dodds—and we have a transcript of those questions and



answers—you had no reason to suspect that any such information got outside of parameters of OHIP and the ministry.

**Dr MacMillan:** Yes.

**Mr Eves:** And again, from your transcript this morning on pages 1035-1 and 1035-2, you indicated that when you were talking on December 10 to Derek Ferguson of the Toronto Star, “in which I said exactly what I just told you, that we were quite proud of our record, and we had various checks and balances, that we were not aware of any information ever going out from OHIP that would get in the wrong hands.” Although I think that you were aware of the fact that the e-mail went to several people who were not connected with OHIP, such as, for example, Mr Howard, who was a member of the minister’s staff in her communications department, why would you make such a statement to Mr Ferguson?

**Dr MacMillan:** Well, that was, I think, what, about three weeks earlier? There are many decisions made during the course of the day, with lots of sensitive information. I just did not recall immediately, I guess, that incident, nor did I have any knowledge of it having gone astray. It was information for a briefing note. The briefing note was subsequently prepared. I have indicated to the committee that Mr Howard was away and did not receive it, I understood, but I am not sure when I remember—whether I knew that right at the time or not. That was not uppermost in my mind. I really thought that I had stopped the flow of information that could be seen by people that it be best not seen by.

**Mr Eves:** But in fact, on December 10, 1991, you were aware that some of that information had gone out from OHIP.

**Dr MacMillan:** Yes.

**Mr Eves:** And you said in your conversation with Anne Dawson, “Yes, I recall a document that I did retrieve in the course of my job that went beyond the detail that I felt was necessary going out of the division.” Just, I guess, making the point that the conversation that you had with Anne Dawson came to a rather different—or you made a different statement to her than you made to Derek Ferguson of the Star and than you made, I would suggest, to Evelyn Dodds a few days before that in her conference. You suggested to Mrs Dodds and you suggested to Derek Ferguson that none of this information ever went out of OHIP, and you admitted to Anne Dawson that it did.

**Dr MacMillan:** Well, I would agree with you, Mr Eves. Technically, I should have not said “out of OHIP,” I guess. I obviously erred. It is not that I forgot all about that document, but I told you before that we work with Dr LeBlanc’s office every hour of the day in doctors and their incomes and their impact on the threshold, so information transmitted back and forth between Dr LeBlanc’s office was fairly customary. This, I have already explained, demonstrates more detail than had been transmitted before that, so maybe that is partly why I took it back.

**Mr Eves:** Okay. With respect to the Anne Dawson interview, you say on page 1035-2 of this morning’s transcript, and I quote, “To this day, I do not know whether

that document ever did leave the ministry,” end of quote. You have indicated earlier, I believe, that—despite the fact that Anne Dawson seemed to know some information, for example, names of two particular people who had access to the e-mail, why would you not ask her where she obtained her information and what she knew about the ultimate distribution of the e-mail, seeing as how you are so concerned that you get all copies of the e-mail back and nobody outside of OHIP find anything out about what was in it?

**Dr MacMillan:** I do not recall asking her. Maybe I should have. I said this morning that I doubt, if I asked, that she would have given it to me. But maybe I should have asked it. I did not.

**Mr Eves:** Larry Corea—now, to be fair, you indicated that you did not know about Mr Corea gaining access to the e-mail in place of Mr Howard until some time later. Is that correct?

**Dr MacMillan:** I believe so.

**Mr Eves:** When you knew that at least it appeared on the face of the document that a copy of the e-mail went to Mr Howard, did you make any attempt to retrieve it from his office or the minister’s office?

**Dr MacMillan:** I did not make any attempts to retrieve it directly myself. I instructed and requested my equal person, Dr LeBlanc, to undertake that. He was responsible for the preparation of the notes. I trusted that it would be done, and indeed, until December 10, I had assumed it was done. I did not phone around and do an investigation on my own. It might be that I should have, but I did not.

**Mr Eves:** So you regarded that as Dr LeBlanc’s responsibility?

**Dr MacMillan:** And I also believed that he would do it because he shared with me, as I said, the observation that this went beyond prudence to be giving this kind of information to people in the ministry.

**Mr Eves:** Has anybody on the Premier’s staff ever contacted you to discuss this matter or any aspect of it?

**Dr MacMillan:** Anybody—

**Mr Eves:** Anybody on the Premier’s staff ever contacted you to discuss this matter—

**Dr MacMillan:** No, never.

**Mr Eves:** —in any way, shape or form?

**Dr MacMillan:** No.

**Mr Eves:** To your knowledge, has any member of the Premier’s staff discussed this matter with any other person in the ministry?

**Dr MacMillan:** I have not heard of that happening, no.

**Mr Eves:** You have indicated that you had two fairly short telephone conversations with Ms Martel about this matter.

**Dr MacMillan:** Yes.

**Mr Eves:** Or since then, I guess is a more accurate way of putting it.

**Dr MacMillan:** Yes.



**Mr Eves:** Have you had a conversation with anyone on Ms Martel's staff?

**Dr MacMillan:** Yes. Let me try to recall who. The afternoon of the question to me by Ms Dodds, I notified, I have already said, the deputy's office. And I called someone in Ms Martel's office, on her staff—I do not think it was her direct executive assistant, but one of her assistants—to just report what I had seen. I said to the staff person that “I felt I should inform your office about this accusation.” But I said also—I remember saying—“I think it's best that if there are any further inquiries, you make your own calls, but I would prefer and think it proper that Ms Martel not call me.”

**Mr Eves:** Do you recall who you had that conversation with?

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**Dr MacMillan:** I think if I saw a list of her staff, I would recognize it. I cannot remember right now.

**Mr Eves:** But you could get that information for us?

**Dr MacMillan:** I think so.

**Mr Eves:** Okay.

**Dr MacMillan:** Then—sorry.

**Mr Eves:** It is all right.

**Dr MacMillan:** To complete your question, I believe before the meeting I went to in Sudbury, I may have had a conversation with David Sword of her office, who, as I have recalled, attended at the Thursday night meeting on December 5. I may have called to arrange the media distribution or whatever. I cannot remember the exact—it was simply very straightforward. I could try to look up my telephone index to see when, but it does not stick in my memory as being anything important.

**Mr Eves:** Those are the only two occasions or two individuals?

**Dr MacMillan:** Yes.

**Mr Eves:** You did not discuss any information with respect to the subject matter of the meetings in Sudbury or particulars with respect to individual physicians?

**Dr MacMillan:** No, I did not.

**Mr Eves:** Have you had any occasion to talk to any other MPPs or their staff with respect to the Sudbury meetings in November and December, either before or since? If so, on what occasions and what did you discuss?

**Dr MacMillan:** No, I do not recall ever speaking to any other MPP or their staff.

**Mr Eves:** To the best of your knowledge, has anybody in the minister's office, any of her staff or any ministry personnel, discussed this matter with Ms Martel or any of her staff?

**Dr MacMillan:** No, I have no knowledge—

**Mr Eves:** You have no knowledge?

**Dr MacMillan:** —of conversations, no.

**Mr Eves:** What have you done, if anything, since the middle of December about retrieving the e-mail and trying to ascertain where in fact it had or may not have gone, and what action have you taken, if any, since that time?

**Dr MacMillan:** Well, I have indicated this morning that when the Sun reporter brought this apparent leak to our attention, directions came in through the deputy to the coordinator for freedom of information, Andrew Parr, who sent out a document—I believe it is an exhibit now—asking us to do a number of things, one of which was to follow the e-mail, put it in a sealed envelope, contain it but do not destroy it. I was also, and still am, under the impression that an investigation was to be done by the freedom of information, privacy commissioner.

**Mr Eves:** Okay. I just have one small area I want to pursue in addition, Mr Chairman, and then I will be finished.

**The Chair:** I would remind you of the time as you do that, that there is approximately five minutes.

**Mr Eves:** That is fine. With respect to the medical review committee, and Dr Donahue in particular, do you have any idea when that review on Dr Donahue was commenced?

**Dr MacMillan:** I do not want to talk about any particular doctor as it relates to the medical review committee.

**The Chair:** There is a concern that the divulging of that information—I would ask Mr Eves to make a note of that question.

**Mr Eves:** Okay, we will save that one.

**The Chair:** Are you complete, Mr Eves?

**Mr Eves:** I have finished.

**The Chair:** Thank you very much, Mr Christopherson.

**Mr Christopherson:** Thank you, Mr Chair. Dr MacMillan, you have testified that you do not recall at all any information that might come under the purview of the freedom of information act being relayed at the breakfast meeting or the lunch meeting that you had in Sudbury with ministers and MPPs and an MP, I believe.

**Dr MacMillan:** Yes, I am quite confident of that.

**Mr Christopherson:** Okay, you have also testified—and I am reading from yesterday's Hansard, 1715-1—just to reiterate: “I am so sensitive to that”—meaning the release of any information—“having gone through personally the Evelyn Gigantes release of information. I am above that. I just do not believe that I could have inadvertently even slipped out something about an amount of income or any other matter relating to Dr Donahue.” Is that still perfectly accurate?

**Dr MacMillan:** Yes.

**Mr Christopherson:** In today's Ottawa Citizen there is a quote from an opposition member that states, “It stretches one's credulity to believe that this particular doctor's practice, the size of his billings were never discussed at any of these meeting with ministry officials.” I would ask how you would respond to that.

**Dr MacMillan:** I think I have responded fairly clearly with respect to—

Interjections.

**The Chair:** Order.

**Dr MacMillan:** I believe that I have described to the best of my ability the discussions about what happened



during those two meetings and the conversations that took place.

**Mr Christopherson:** Okay. The day that you were in Dr LeBlanc's office, first of all, who was in the meeting in that room at that time? Do you recall?

**Dr MacMillan:** No, I indicated yesterday I did not recall everybody precisely. I do recall precisely that Eugene LeBlanc was there. I believe Diane McArthur was there, I believe Maurice Jones was there and I told you that I believed I saw Helen Ambrose at the door. I do not recall whether anybody else was in there at the time or thereabouts, but that is the best of my recollection. It is not firm, and you may find that not to be case, but that is my recollection.

**Mr Christopherson:** Okay, that is fine. We will leave that. Can you recall any individuals who returned to you directly a hard copy of any of the e-mails?

**Dr MacMillan:** Yes, I also indicated that, that the very first thing that morning when I first found out about it Maurice Jones came to me. I believe I was in Dave McNaughton's office. He had that three-piece package for me with my name circled in pencil on it and he was walking that around, as I understood it, to the people whose names it was addressed to with copies to two other people. When he walked it into me I had the same reaction that I had later in Dr LeBlanc's office, saying: "Who sent this? Why was this sent? There's too much detail here. Why do they need this?" I was mad.

**Mr Christopherson:** Again, I would just like to make sure that we are crystal-clear that it was testimony you gave yesterday to your questioning from Ms Jackson that there were three e-mails and that none of the e-mail—I will use the correct language—"There's no reference to the medical review committee in the document." Is that correct? In all three documents there was no reference to the medical review committee as that committee is described earlier in your original testimony?

**Dr MacMillan:** That is correct. You are talking about the three stapled together?

**Mr Christopherson:** Yes.

**Dr MacMillan:** The coverings—

**Mr Christopherson:** The follow-up and the one that was really just the two of them.

**Dr MacMillan:** Oh, I am sorry. The answer is the same—no.

**Mr Christopherson:** In all, there was nothing in any of them that referred to, and I do not want to use any wrong language, the medical review committee in any way as we have talked about it earlier in questioning, as to what it is and how it exists and what it does, no reference to it?

**Dr MacMillan:** No reference to it.

**Mr Christopherson:** Fine. I believe a couple of my colleagues have some more questions, Mr Chair.

**The Chair:** Yes, we have Mr Owens on.

**Mr Owens:** In terms of the testimony around the Treasurer and the document, in your experience is it unusual for an MPP, whether as part of the government or as

part of the opposition, to request a briefing note on a particular issue within his or her riding?

1510

**Dr MacMillan:** No, it is certainly not unusual to have a constituent request, either directly from the MPP or the staff, especially when the issue relates to that particular riding. I am not familiar with the processes of briefing notes' transmission between ministers' offices, but certainly we get direct requests or requests in the form of letters that we have to respond to, put the information on, back for the minister's signature to send to the particular MPP or minister. In this case, because of the morning broadcast presumably, there would be a more urgent request than the usual form of transmission of information through a signed letter.

**Mr Owens:** Without going into the details contained in that briefing note, do you have any reason to believe that would be the information that the Treasurer would request in terms of dealing with the situation as it was occurring in the Sudbury area?

**Dr MacMillan:** He certainly was extremely interested in the cardiology services, being there on a Saturday morning in a spot that was not his riding, as I understand it, so I guess he would be as interested in the withdrawal of dermatology services and the comments being made by the particular doctor affected. I guess when you look at it, the cardiologists represented a group, including cardiovascular surgeons. In this particular case it represented one physician. Therein lies some of the dilemma of providing information that did not relate. We do not have anything else about doctors other than their billing. That is all my staff could send and that is what they sent.

**Mr Owens:** Thank you, Mr Chair.

**The Chair:** Mr Mills?

**Mr Mills:** Thank you very much, Mr Chair. Doctor, my question centres around the process one goes through when one finds an errant doctor. I am interested to hear exactly the steps that happen to come to grips with the shortcomings.

**Dr MacMillan:** Okay, let me start again at the local level. We have district medical consultants out close to the providers' practices in order that customer service, so to speak, can be enhanced. Indeed, for the most part it works well and the local medical consultant is seen as an agent for the physician in dealing with the billings and for the most part is assisting the physician in adjudicating claims, complex claims that have to have sometimes an individual consideration, problems in billing and so on. So the staff of the district office receiving the claims and the physician who is in my division assist in that process.

They also have the other hat. The other hat is of course to detect people who are abusing billing privileges or who may be innocently charging for things in an improper way. Therefore it is the duty of the local medical consultant to bring those inequities to the attention of the physician with the expectation that they be corrected. If the expectation does not come to fruition and the physician ignores the advice of the medical consultant, then the local medical



consultant will undoubtedly contact head office in order to possibly have a further review of the doctor's practice.

For our part, in reviewing a doctor's practice that is only one source of our attention to a doctor. The computer program will identify aberrant profiles, someone who has an excessive cost per patient, someone who sees four times as many patients as someone else, does or has repeat visits or inappropriate charges. We receive calls from the public at times. I have described, I think, for the committee various ways in which a doctor comes to our attention. Obviously doctors who are high-income earners, high billers, have more attention paid than someone who is not billing to a high degree. Those are almost routinely analysed and indeed a high percentage of the cases that do eventually go to the medical review committee and are deemed to be inappropriately billing are people who are at the high end of the income scale from OHIP.

My staff do all that work without my direct supervision. I do not interfere with their ability. Sometimes I personally phone them and ask them to have a look at someone because it has come to my attention. But for the most part, routinely, about once or twice a week, I will get a package on my desk which contains a covering letter for my signature, and eventually the assistant deputy minister's signature, that contains all the information that we wish to report to the medical review committee of the college for its adjudication of the matter.

I have told you that when we send them we do not know that they have erred, but we suspect they well may have, and I am told that in approximately 70% of the cases that do go there is a recovery subsequently made. I have described for you the process then after it leaves my office, with the medical review committee. I think I may have failed to say that if the physician does not agree with the final judgement of the medical review committee, he or she has access to the Health Services Appeal Board, and indeed in many cases an appeal is made there and the issue, I believe, is opened to public scrutiny in that forum.

**Mr Mills:** Thank you. So the ultimate is that there is a recovery process for the slippage, shall we say?

**Dr MacMillan:** Yes.

**Mr Mills:** At any time in your experience has there ever been a doctor charged with any criminal offence?

**Dr MacMillan:** I believe there have been about 20 doctors charged with criminal offences relating to OHIP over the past 10 years. I am not certain of the number that might emanate from the MRC, if any. It would seem apparent that they could pick up information, obviously with having an inspection in place to find information, that would lead to the feeling that outright fraud had occurred, and in those cases of course the police force having jurisdiction in the area of the practice would take over the whole matter.

**Mr Mills:** My next area of question is that I just wonder if there has been any request for information for Dr Hollingsworth at any time.

**Dr MacMillan:** No, I have never had any request that I have heard of on Dr Hollingsworth.

**Mr Mills:** If I may, Mr Chair, I would like to go to exhibit 23. It is the CBC interview with Dr Hollingsworth and a CBC reporter by the name of, I think, Ruth Reed. During that interview it goes on to say:

"Dr Hollingsworth: No, there was no authorized access. And the other point about our files is that—

"Reed: You're saying she had those files without you authorizing them?

"Dr Hollingsworth: I'm saying she told me she'd seen my file. She knew when I entered the underserved area program. She knew statistics about me that I must say I didn't know myself."

Would it be fair for me to assume that the document that Dr Hollingsworth is talking about is the public document exhibit 8 whereby there are all kinds of statistical detail about the date the support started and things like that? Would it be fair for me to assume that the document Dr Hollingsworth is talking about, having heard what you said, your freedom of information, how you look after the documents, that in fact the document that Dr Hollingsworth said is the one that the minister had is in fact this public document?

**Dr MacMillan:** I have no—

**Mr Harnick:** How does he know that?

**The Chair:** Order. Allow Dr MacMillan to respond.

**Dr MacMillan:** I have no knowledge of any other documents that would be available to which he would be referring. I believed, when I read that, that he was either misinformed or he was just adding fuel to the fire. I did not believe that anybody would have a file on Dr Hollingsworth, since I am the only one, plus the district office, that would have access to obtaining that kind of information. I am not aware, to this day at least, of any file having been prepared on Dr Hollingsworth.

**Mr Mills:** Is that this public document, with the detail?

1520

**Dr MacMillan:** Just the one, of course, where his name is listed with the others in the province on the underserved area program.

**Mr Kormos:** You say when criminal changes are being contemplated it is no longer the Ministry of Health that conducts that investigation?

**Dr MacMillan:** Right.

**Mr Kormos:** What happens? I do not understand what happens. You say local police. Is it local police or OPP? A police force assumes the responsibility for investigating at that point. How does that transfer of responsibility take place?

**Dr MacMillan:** I mentioned yesterday how we would flood a doctor's practice with verification letters to patients, saying: "The following is your list of services. This is how much was charged. This is the service that was performed in the name of the doctor." The patient is then asked, "Please contact the ministry if you believe this is in error."

I have never been personally involved in such a referral but, as I understand, when such a determination is made that patients are writing back, saying, "I've never seen this guy," or "I never was there; I don't even know this doctor,"



that type of thing could come to our attention. Obviously the fraud squad of the OPP might be contacted or, in the Metropolitan area such as this, maybe the Toronto police.

I just indicated that the MRC might do the same thing if they come across what they believe to be criminal behaviour, but that is a very rare thing, as you know from the figures I gave you of 20 physicians over 10 years for 20,000 physicians in the province.

**Mr Kormos:** I got one of those letters once, around four years ago. I did not fill it out. I did not return it. I am not in trouble?

**Dr MacMillan:** No, because it probably told you that if you were satisfied you do not have to return it.

**Mr Kormos:** Okay, it is one thing I do not have to worry about. But I come from a small town—I come from down in the Niagara Peninsula—not that much smaller than Sudbury, but still not quite Sudbury. I know that other people have gotten those letters. Are you aware, especially in small towns, of some of the impressions these letters create in people's minds?

**Dr MacMillan:** I realize it could create the impression we are snooping on a doctor. But you must remember that physicians in this province enjoy a tremendous privilege to be able to decide what to send as a bill to the Ontario government; you are spending 10% of your provincial budget on doctors. It is obviously prudent to be accountable. If I had my way, the patients, at the end of the year, would all receive a receipt for the services rendered on their behalf.

**Mr Kormos:** My grandmother, an old Ukrainian lady, when she got this letter—she is insistent that the doctor is already not just being investigated, but just about due either that day or the next to be captured. Have you ever encountered that sort of impression?

**Dr MacMillan:** I do not think that is a prevalent issue. I often had patients who would come in to me and say: "Doctor, I got this in the mail. What does this mean? What should I do with it?"

**Mr Kormos:** Dr Donahue is a pretty high-profile doctor in Sudbury—even before his speaking out on the matter of threshold—is he not?

**Mr Scott:** Do you think Shelley jumped to the same conclusion as Peter's grandmother?

**Mr Kormos:** You never can tell. If you speak ill of my grandmother, Mr Scott, you will have a bigger problem than you ever had.

**Mr Scott:** I am just comparing her conclusion to Shelley's.

**The Chair:** Order. Dr MacMillan, would you please respond to the question.

**Mr Kormos:** Let's talk about Dr Donahue and his profile in Sudbury. He is a pretty high-profile physician, is he not?

**Dr MacMillan:** I have no idea of that, really. I mean, as the main dermatologist in town, I would think he would be well known.

**Mr Kormos:** With a lot of patients, and I am talking about medical patients.

**Dr MacMillan:** Any doctor in the north, where those specialties are limited, is generally busier than a doctor in the south with more competition.

**Mr Kormos:** Somebody in Sudbury would not necessarily have to talk to you to have the impression that Dr Donahue was a pretty big biller.

**Dr MacMillan:** I cannot comment specifically on that. The night the deputy, Dr LeBlanc and I drove in from the airport, the taxi driver seemed to know almost as much about Dr Donahue as my two colleagues did.

**Mr Kormos:** That he had a big practice.

**Dr MacMillan:** It was news. It was in all the papers. It was the talk of the town. There was a big town hall meeting. The regional council had a great big presentation on the issue of dermatology, I believe, that Dr Donahue presented a night or a couple of nights earlier. It was headline news at that time.

**Mr Kormos:** The fact that somebody is worried about threshold implies that he or she is near or at the point where he or she is billing that kind of money?

**Dr MacMillan:** One would expect that, yes. In my experience anybody who has complained about his own particular circumstances—there are many who complained on behalf of physicians in general. But those who raised with the press their own peculiar circumstances, including and very importantly when they believed they reached the threshold, I think, as I indicated yesterday, it would be fair to—I cannot say; you would have to ask somebody from the north. But I think it would be a fair impression that an intelligent person would draw from that that if you are reaching your threshold in November, only seven and a half or eight months into the fiscal year upon which the determination was made, there would have to be a general feeling that you were doing pretty well.

**Mr Kormos:** You were asked questions about being contacted by the Premier's office, by any ministers' offices. I trust you have come here eager to be candid in your responses to questions.

**Dr MacMillan:** Yes.

**Mr Kormos:** Of course the impression that is trying to be created is that somehow there is a coverup. You are aware of that effort, are you not? I am talking about the effort to create the impression that there is some sort of coverup.

**Mr Harnick:** Shelley's answers did that.

**Dr MacMillan:** I think, Mr Chairman, that is a question I would rather not answer.

**The Chair:** I understand.

**Mr Kormos:** Have you come here with any purpose other than to tell what you know?

**Dr MacMillan:** No, no other purpose.

**Mr Kormos:** Is anybody influencing what you have to say to this committee this afternoon—or yesterday?

**Dr MacMillan:** Not a bit.



**Mr Kormos:** Could you anticipate what your response would be if somebody were to suggest that you somehow alter your comments to comply with what other people would expect?

**Dr MacMillan:** No, I have not been approached by anyone who has made any kind of suggestion, not the deputy minister, nor any of the other people who you are going to call whom I know and have worked with. I have not talked to the Minister of Health about this since the meeting I told you about on December 11 when I came to Toronto. I tried, both at the time or shortly after, to document everything I could remember. I made a few errors that I have tried to recognize. I am willing to answer any question as long as I take the only advice I have from counsel: that I do not release here what I have been trying so hard to protect, confidential information.

**The Chair:** Mr Christopherson is next on the list. I would remind all members that as a result of a subcommittee meeting we decided the rotation of the questions. I hope all members of the committee would, and I expect all members will, respect other members who now have the floor and who will subsequently have the floor to pose questions without any interventions.

**Mr Christopherson:** Dr MacMillan, the memos that were sent and cc-ed: I have gone through the Hansards and you acknowledged some of the people it was sent directly to and then cc-ed to. Exhibit 13 is referred to in the questioning by Ms Jackson as having the balance of those people. Do you know all those people personally?

**Dr MacMillan:** Yes, I know them all.

**Mr Christopherson:** All of the people listed on exhibit 13?

**Dr MacMillan:** Yes.

**Mr Christopherson:** Did everyone on that list receive it?

**Dr MacMillan:** I do not know for certain. I believe they did. My name is circled. It was hand-delivered to me the following morning. It is my assumption that I was probably the last one to get it, since most of the other people probably would have been available the day before at the time the documents were put together.

**Mr Christopherson:** Obviously because I do not work there, I do not know the relationship between you and these folks. I am just asking if you know each and every one of these people personally in any way, like, if somebody mentioned his name, you would know who he is. I am asking also if that applies to the person who received, if I read the transcript correctly, Paul Howard's copy, which would be Mr Corea. Do you know all of those people personally?

**Dr MacMillan:** I know Mr Howard because he attended in Sudbury for the second meeting, the town hall meeting, with the physicians. That is the first time I had an opportunity to really get to know him, other than his name and his face. Mr Corea I have not had occasion to work with and I do not know.

**Mr Christopherson:** So you never met him. But the rest of them you do know?

**Dr MacMillan:** I may have met him, but I just cannot recall—

**Mr Christopherson:** If he walked in right now you would not be sure that was Larry Corea?

**Dr MacMillan:** I do not think so.

**Mr Christopherson:** The balance of the folks here, though, you would? If they walked in you would know that that is so-and-so, or if somebody said their name when they walked in you would know who was about to sit down?

**Dr MacMillan:** Certainly, yes.

**Mr Christopherson:** The other question I have relates to this morning's discussions. I just want to walk through this, page 1045-1, a question from Ms Jackson. It is another reiteration of your quote, "I almost fell off my seat when I learned someone had broken their oath of allegiance." You responded, "Yes. I said that." Ms Jackson asked, "Did you think anyone had broken their oath of allegiance?" You responded, "I immediately jumped to that conclusion that somebody who had access to it in the people whom I had understood at that time had access to it either gave it or expressed the details about to someone else that they should not have." Ms Jackson asked, "So the breaking of the oath of allegiance, is that in your view sending the information to Toronto or releasing it to the media?" You responded: "Oh, no. It was releasing it to the media. It is interesting that the Sun article the next day attributed the leak to one of my staff, which was rather poor reporting and upset my staff member considerably."

**Dr MacMillan:** Then I went on to correct the fact that it was not the next day; it was January 27.

**Mr Christopherson:** Do I draw from that that you know with a certainty it was not your immediate staff that divulged that information?

**Dr MacMillan:** No, I do not know that it was not my immediate staff or anybody in the office that I tried to tell the committee that I thought had access to it, including the secretarial support. Obviously my reaction about the allegiance thing at the time seems to indicate I had forgotten to think about ministerial staff, minister's staff—

Interjections.

**Dr MacMillan:** I do not even know whether they take an oath of allegiance. I presume they do, or they should. But obviously I know that I took an oath of allegiance. I have since confirmed from everybody I can ask that yes, it is standard routine. It is part of the Public Service Act, in that is a declaration of maintaining confidentiality, both at the time of employment and following any cessation of employment. So that is why I made those comments.

**Mr Christopherson:** Do you have any reason to believe there were any people outside those who have been mentioned so far who knew the existence of these e-mails prior to the reporter calling you? Do you have any indication that it was outside the known group of people who would normally receive it in the usual course of business? You then retrieved it. It was after the fact, obviously, by virtue of the phone call from the reporter that somebody outside—that is where I am assuming you felt that someone



had broken their oath of allegiance. My question is, do you have any reason to believe that, prior to that, anyone else had that information that should not have?

**Dr MacMillan:** No, none whatsoever.

**Mr Christopherson:** Can I ask, in your opinion, and I realize it is your opinion only, why might that document be leaked? What would a motivation be?

Interjection.

**Mr Christopherson:** Well, the opposition has lots of opinions on it. I thought Dr MacMillan might.

Interjections.

**The Chair:** Order. Again, I remind members of the committee that a question has been asked of Dr MacMillan. Let us give him the opportunity of responding without any interjections.

**Dr MacMillan:** I think I can answer it, Mr Chairman, just in a roundabout way. After the events of December 5 became public, the awareness, or indeed the hard copy of that document, became far more newsworthy and important. Up until that time—any of us involved can be asked—we thought it was just one of those decisions you make and one of those judgement calls you make, that you change, and it was not a big event. It was a big event for a few minutes and a morning and that was the end of it.

If someone recalled the knowledge of the document, of course, following the news of December 6 or 7 or beyond, then that document became very valuable as a newsworthy subject. If in fact somebody had released it earlier, why did they not embarrass everybody by producing it earlier? It would not have meant too much, other than obviously got all the civil servants very worried about their conduct. But the release of it at the time became a totally different matter because of the issues in the House.

So I do not know. I also think that supports my theory that maybe the document is not even out there. The recollection of the contents is out there, and that is why nobody has ever in the press, or anywhere, produced the details in the document. I have never seen them. I have never heard them addressed in any kind of detail. I may be wrong, but that is my opinion.

**Mr Christopherson:** Thank you, I appreciate that. So it is fair to say then that if there was not the political drama in the Legislature, the most significant factor in this whole episode in your office would have been the fact that there was an embarrassment on your part and on your chain of command, to use that phrase, of information moving that did not follow the way it should have. It would have been something that should not have happened, but other than an embarrassment to you and your people, it had no real relevance, assuming that it did stay contained within people who were already under an oath to keep it quiet.

**Dr MacMillan:** That is exactly right.

**Mr Christopherson:** So is it fair to say then that it is possible that the leaking of it could have had some relationship to the dynamic that was playing out in the Legislature?

**Dr MacMillan:** That is the observation I have made.

**Mr Christopherson:** So it is possible that it might have been politically motivated.

**Dr MacMillan:** Might have been I suppose.

**Mr Christopherson:** Thank you.

**The Chair:** Thank you very much, Mr Christopherson. There is some available time left to members of the government. If there are no further questions—

**Mr Scott:** I want to make it clear that I did not leak that information.

**The Chair:** Thank you very much. If there are no further questions by members of the government, we have completed the rotation as per agreement.

**Mr Christopherson:** On a point of order, Mr Chair: We have not discussed this in subcommittee that I recall, and it is just a matter of procedure, where I assume you are about to take us into in camera session, but I would ask if it is your intention that as a result of that session, and in light of my colleagues' concern that as much of these proceedings as possible take place in public, that if there are further questions of Dr MacMillan that could take place in public, that you would again ask Dr MacMillan to assume the chair so that we could ask some questions.

**The Chair:** Certainly, if that be the wish of a subcommittee meeting, that is fine.

**Mr Conway:** I could not agree with that more completely. No more objection.

**Mr Christopherson:** Good. Thank you, Mr Chair.

**The Chair:** Thank you on that point. We will be moving, pursuant to paragraph 10 of the terms of reference, into an in camera proceeding. I would first ask that we recess for 10 minutes while we get the room prepared.

The committee continued in closed session at 1535.

The committee continued in open session at 1747.

**The Chair:** I would suggest that this be an in camera procedural committee meeting for which Hansard is usually not required. I would suggest at this point that we can dismiss Hansard on this.

**Mr Christopherson:** We do not see any real need to go into in camera to have this discussion.

**The Chair:** You do not see the need to go into in camera? Concerns? Proceed.

**Mr Christopherson:** I do not think there is anything for us to initiate. The subcommittee has made its decision and we are here.

**The Chair:** The subcommittee made a decision earlier on that if there are matters of a confidential nature, they would be provided but on an in camera basis. I am summarizing that. Is there any concern of that nature?

**Mr Conway:** It is the view of my colleagues, and of my friend the absent member for St George-St David, that the decisions made by the wise subcommittee should be confirmed.

**Mr Harnick:** That is my understanding. Obviously Mr Christopherson felt the same way, so I think we can probably conclude this meeting and start this again tomorrow.

**The Chair:** I think that now has been resolved as per the subcommittee's decision.

**Mr Christopherson:** I have a question. Do I understand then that all the members of the committee will be complying with the decision of the subcommittee to sign and take the oath?

**The Chair:** It would be my intention that if a person is not going to sign the oath, then that person would not be able to partake in the in camera proceedings.

**Mr Christopherson:** I am not at this time going to commit to what our position is. If someone refuses at that point to follow the procedures laid out by the subcommittee, we reserve the right to comment on that at the time something may happen.

**The Chair:** Certainly you can do so whenever you wish. I think it is very clear from our terms of reference that "members of the committee and/or their counsel shall be permitted, upon swearing an oath of non-disclosure," to take part. That is section 9. I think the terms are very clear. We have discussed these in subcommittee meetings on more than one occasion I think. The oath itself is one which has been prepared by counsel, reviewed by members and, in fact, amended by members, which is now agreeable and acceptable to all members as a condition to being a participant in an in camera meeting.

**Ms Jackson:** Could I just, in that vein, in order that we can proceed at 10 o'clock tomorrow, ask that all mem-

bers who are going to sign the oath, do so tonight and we will get that paperwork done with? It has to be sworn in front of someone who is a commissioner, and there are a number of us here.

**Mr Christopherson:** Yes, I think it would be good for us to know, because it does raise a couple of other questions that we would like to discuss, if indeed someone is going to not take the oath.

**Mr Kormos:** Let's hear it.

**The Chair:** Has everyone signed the oath?

**Ms Jackson:** No, because we have not got around and done it. We will have to administer the oath. I do not think we need to stay in committee to do this. We could administer the oath before people leave, just to deal with it.

**Mr Christopherson:** Will the Chair then advise first thing in the morning whether we have any inconsistencies?

**The Chair:** Certainly. I will be able to advise as to any member who has not signed an oath of non-disclosure. We will, I believe, reconvene tomorrow at 10 am. We will continue, or at least, let us say, commence the in camera examination of Dr MacMillan, as per agreement, and we will then enter into questions. The committee is adjourned until tomorrow at 10.

The committee adjourned at 1751.



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Kormos Peter (Welland-Thorold ND) for Ms S. Murdock

McGuinty, Dalton (Ottawa South/-Sud L) for Mr Scott

Wood, Len (Cochrane North/-Nord ND) for Mr Bisson

**Also taking part / Autres participants et participantes:**

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Page, S. John, Cassels, Brock and Blackwell

**Clerk / Greffier:** Arnott, Douglas

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